

CUIQUE SUUM.<sup>t. to. 11.</sup>

The Law of

# T Y T H E S

Affirmed against all opposers.

OR,

*An Apologie for the maintenance of a  
Gospel Ministry, Confirmed by Di-  
vine and Humane Sanction.*

*By Christopher Slevell with a Black Title, and  
without the dedication to Cyprian by the Author,  
contents.*  
**E V E N S O,** hee that Preacheth the Gospel  
must live of the Gospel. 1 Cor. 9. 14.

Whatsoever you would another should doe to  
you, doe you the same, for this is the Law and the  
Prophets. Mat. 7. 12.

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L O N D O N ,

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## THE INTRODUCTION:

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*Deo, Ecclesiae, Patriae, Tibi.*



Ustice and Righteousness are among the great things of the Christians Law. They mistake Religion, who understand it to direct only in heavenly things; one part wherof is to make Honest Men, and while the Decalogue is within the compas of our Creed, and we believe both Tables of Gods law to contain our

Morall duty, the scope of one must be (rightly understood) ever to guide our outward, morall, civil conversation. It is an age now much treating of Religion, and hard to suppose that any of those who are most forward would (willingly and knowingly) leave out one half; leading men to God with negle<sup>t</sup> of Men, and trampling down all Civil righteousness, in order to Heavenly: This makes it the more

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2 C. 7. 36.

needfully considerable what that Righteousness is, that we may not seem to love God with neglect of our Neighbour, or in zeal of Religion to permit our selves unjust : but so to make our pilgrimage through this world, that we leave the reputation of Honest men behinde us, and so to pass through things temporall, that finally we lose not the things eternall. Particularly, In that great and so much vexed case and controversie of the remainder of the Churches Patrimony in *T Y T H E S* : which many look upon as of no more Right or Wrong, to continue or withdraw the payment of, then in relieving a Beggar with an Alms at the door : They may, or may not (what any advantages shall give opportunity to) with equal liberty, and no wrong to a just Conscience, parting or not parting with as they can contrive or shift, and so take to themselves that boundless license the Apostle has given in another case ; let a Man (in this) do what he will, he sinneth not : As if to venture upon the spoyls of the Church, were no more then to divide what men have taken in hunting; to defraud Religion, not so bad as to disturb Humane Right, (and yet that is bad enough, and yet this is worse) And to remove the pillar (worldly) of Gods service, of no greater guilt, or doubt, or fear then to seiz upon that a man finds in his way, or to fetch Timber for building a new house, or repairing his old, from his own *Lebanon*. A great mistake ! whereof the Enemy of all goodness makes much advantage ; being like to reduce the Lords Ministers hereby to great streights, and to get the daily allowance of oyle withdrawn : which, though ordinary in it self, was wont to be consecrate to keep light in the Temple : by subtracting *Levi's* portion, I mean, to disable *Levi* himself from attending the service of his God ; As (1) how can worldly men live in this world and follow worldly busines, (as to the outward part to be studied and acted by Man, even Gods service is) without worldly maintenance ?

(1) "Αριδ γι  
θενταγνων  
ειδωτην η Σιν  
και ζην.  
Αριτ. polit.  
lib. 1. cap. 3.

Such considerations as these awaked my thoughts to that I took to be a very needful enquiry, scil. Whether Tythes had indeed any of that we call Right or good title among Men demonstrable, to hinder the subtraction by any that are consci-

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conscientious? A Right in equity for maintenance of Gods service? Sure, this is very likely. A right in Justice by Divine law, which apportioneth (in the New-Testament) to (2) every labourer his reward, (3) to him that preacheth the Gospel, to live of the Gospel; and this no less probable. Nay, for the very Tenth in kinde and proportion, a worldly, civil, positive, humane Right; Such as might inferr the detaining, Wrong, and make it civilly injurious not to part with what is not now courteously given, but justly paid; I resolved, it might be so: I assured my self it was so: And thought I had read and obserued so much, that reduced to heads, and presented to view, might perswade others also: and because it was a truth I thought not known to all, and I perceived very many very much to love the truth; for their sakes therefore I set my self to reprent what I could in haste lay together, to every ones friendly (4) consideration. No other the candor of mine own bosome did assure me I should either doubt to finde, or (5) need to fear: for the Publick had passed nothing against, but many things (6) for these dues, (which secured me on that part) besides the old established laws of the land; and for mine own private, the scales hung almost even: Not much to me whether they stood or fell, went up or down, as having not much to get or lose, to hope or fear. But for Sions sake I resolved I would not, I might not hold my peace: For Gods sake (I know mine own bosom) I was willing to be at the cost of following pains, for the Gospel of Jesu Christ's sake, and endevour to preserve (if God should

tion of any ones Right, as all men, innocency, that set me on work. Or as Pet. *Cliniae et spake,*  
*Nec tam ad ferendum cogere tuta decimorum, quoniam dama animorum;* not hope of worldly gain, but fear of loss of Souls. And this twofold; both of theirs who shall doe the wrong, in with-holding, and theirs who shal miscarry for want of instruction, occasioned by with-holding of this worldly sustentation from him should have held out the light. Other means may be talked of, But —

(5) *H uis agere ex avaritia nesciunt, n de xaria ex raudore.* *adferre debentur o unde e sunt iustitiae noscere, adferre talium debet et ex regula Cor.*  
*Christi. Hom 14. in cap 4. ad Thos. tom. 5. in N. Test. p 152.*

(6) As in the Ordinance of Novem. 4. 1644. yet in force (beside many other) for recovery of them: The repelling of the Kentish, and many other Perfomers against them: The actuall segregation of them from other parts of Delinquents Estates, to piece out a more comfortable Subsistence for Preachers out of them: And, above all, the late exemption of them from sale among other Cathedral Endowments, with express Declaration, that they shall make every Parish, where they arise, afford 100 per an. to an able Guide of Souls. Vid *Act of Law 8. 1649.* and what can, if this do not, affine their purpose? at least a Declaration of such Intentions, which is that we are to walk by.

(1) *M. 2. 10. 10.*  
*Luke 10. 7.*

*1 Tim. 5. 8.*

(2) *1 Cor. 9. 11.*

(4) And shal be  
heartily glad, if  
it shal please  
that God who  
out of the  
mouths of Babes  
and Sucklings  
doth sometimes  
perfect his  
own power so  
much the more,  
as to mak  
the successfull,  
though weak  
means of unde-  
ceiveng any; for  
*Nam quia non  
vestras operes sed  
vobis est iustitiae,*  
as St. Augustin  
somewhere laid:  
It was not so  
much preferm-

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so bless weak endevours) that support had been hitherto the visible and worldly maintenance of Christ's Kingdom in ours, I resolved to dig down as deep as I could, to try and represent to view what foundation and strength that pillar had, which chiefly (as worldly still) hath held it out to the view of the world amongst us; being glad to finde :

(1) *Rex au-*  
*tem barbarus (cir-*  
*ca av. ab Incarna-*  
*tione Domini 63.)*  
*ann. 6 agentes tam*  
*nova audiens & in-*  
*confusa, omnesco*  
*prædictacionis cornu-*  
*covenerunt rever-*  
*bat, nec paternas*  
*Traditiones con-*

*onstare volebat. Quia tamen de longe venerant, vitagie eorū exigebat modestia, ad petitionem eorum gran-*  
*dam insulam fitos, rubis, argus paludibus circumdatam ab Incolis Yuividitum nunupatam (Glastenbury) in*  
*lateribus sua Regionis ad habundandum concepsit. Postea & aliis dieo Reges, liuit Pagani, comperta eorum vita*  
*fanfumosa (Ioseph of Arimathea, and his 12. Fellow Apostles) unicuique eorum unam petitionem terra*  
*successivè concesserunt, ac ad petitionem eorum secundum in morem Gentium dederunt 12. Hidus eisdem confirmar-*  
*unt; unde 12. Hidus precess adhuc, ut creditur, nomen fortiusque. Guilielm. Malone apud Spelm. Concil.*

pag. 5 ex Exordio Chiristiana Religionis in Britannia.

(2) *Matth. 8.20. Luc. 9.58.*

(3) *Matth. 10.40. John 13.20.*

2. That prudence mixed with piety, and true love of God of equall sincerity, and all dimensions with that to their nearest selves, prompted our long since dead and blessed Ancestors, to doe for him as for themselves, building the honour of his house with the same (if not better) materials then their own; and contriving to perpetuate (as they meant) true Christian Worship, by allowing it the best (they thought so) of this world, no weaker nor other support then went to the strongest of their own buildings.

3. That it hath not been yet within the power of malice, envie, pride, tyranny, fraud, wretched covetousnesse, or any other inimicall passions or powers, to scatter or divert, distract or destroy: but by the blessing of God, and under the safety, power, and protection of the Laws, *Levi* hath had his own, and yet has his own, to live on and serve his God, as well as other men. The foundation of Gods Houfe (his Church) stands fast and firm upon the same bottom with theirs (besides what it has from Heaven,) and beside what may

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may be said for a Divine Right ; the Ministers of Jesus Christ have as much of humane as any other men can plead for, that is truly and justly theirs : And this to continue, and this for their works sake, and thus the Gospel made here without (4) charge, which (5) St. Paul sometimes desired so solicitously : It being left to our Autumn of the world, only to reap the harvest of their rich piety, who lived and made very costly seed-times before us, and serve God cheap enough at their cost and charges : They having given so much from themselves, and all the world ; that we need only issue out their bounty, and in what we contribute or give forth to Christian Worship, are not so much liberall as righteous ; nor doe we give, but pay. This is so, I know it to be so, I was glad to finde it so : Others gifts have made it, and great is the advantage that comes hereby to Religion and us, from those are now at rest from their Labours, and their works follow them. I confess, I could not but all along wish so great a work better done ; and sensibly complain of infirmities all along : that *impar congressus* between undertaking and performance was still in my eye ; and another discouragement of another Poet :

*Sumite materia m vestris qui scribitis aquam*

*Viribus.* —

Beside that I often wished I had been able but to bring in what my self saw the Argument did afford, and in part also where it was. But when withall I considered Goats hair and Badgers skins to finde acceptance, (for the tabernacle of those had not gold and silver : when I remembred the Widows mite commended, who gave of her penury, and not cold water to loose its reward, least (saith a Father) excuse should be any from want of fewell to warm. These things again refreshed and encouraged me to the tendry of small things, especially when I called to minde the Great Apostles straits, who was fain to take up with a part-bountie, when he had not wherewith to pay the whole : for *Silver and Gold* (saith he) *have I none*, (to a Beggar that wanted a Drachme) *but such as I have give I thee*, A. t. 3. 6. A ripe Judgment will soon discern wants enough, and so do I ; and that I hope

(4) It hath  
been warily and  
truly obserued  
by some, that a  
Christian exer-  
cise of his Reli-  
gion here in Eng-  
land, for the years  
of some Ages  
past, hath not us-  
ually cost him  
above his ad. per  
an. and that in  
his voluntary Ea-  
ster oblation. The  
rest was but the  
distributing or de-  
livering forth  
what others gave  
long since, and it  
had been injust ce-  
no: to pay, as  
given and ap-  
pointed by ano-  
thers Bounty. As  
for Christening  
and Marriage  
Duties they were  
extraordnary.

(5) 1 Cor. 5. 19.

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is the chiefest fault: To have been better furnished with books, arts, languages, records, means, company, might both have strengthned many a weak nerve, and supplied many an empty vacuity. But yet if but one half hereof be strong, of what I hope none is weak; if a moiety true, of what I hope none is false; there may be so much of it as it is, that he that runs may read, and he that reads and understands will not (I hope) herafter dare give leave to his Conscience to consent to that, which if he have the honesty of a Moor or Saracene, he must step back and pause, and decline; I mean, by reaching out his hand to withdraw that, which if he were one of the Sons of *Pamphilio*, he would let alone, or rather give; or, in plain terms, not dare to with-hold his Tythes, unlesse he be resolved to more then covet his neighbours Goods.

This is a point of Religion very low in an age of Religion, and for Religion pretending to soar so very high; But he that has but this, cannot upon these grounds, do this evil, and sin against his God: If there be Civil Right, there must be undoubtedly Civil wrong, (for they are Correlatives) fraud, injustice, spoil, rapine, coveting, thieving; some of these, if not all: and God grant there be not also upon the grounds, and in the reputation of the Common-law, Sacriledg also, to meddle with, and in this case to pervert what That Law accunts Sacred.

But to come to the Point: (*Det Denq his studiis vel. a se-cunda meis*: Or rather from more Divine extraction: Now God himselfe, and the Lord Jesus Christ, and the Holy Ghost direct my way; *Kat&ōivai* that it may go right in a righteous businesse:) That which I then propose to my selfe to assert, is, *The Civill Right of Tythes*: and mark those three words, they are so many limitations.

1. *Of Tythes*: and so I meddle not with any other Ecclesiasticall possessions or claimes.

2. *Of the Right of Tythes*: and so I meddle not with the story, which hath already been both very successfully done, and also examined.

3. *Of the Civil Right of Tythes*: in evident and expresse contradistinction from the Sacred.

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Which bee it what it will, (there be enough that have engaged themselves *pro & contra*;) The light and brightnesse of the Sun remaines clear in the Firmament after a demonstration: There is fire on Earth, and so are all their Arguments of force for a Divine Right, who claime by it; notwithstanding I shall have shewed there is enough in lower Secular Law amongst us to give right amongst men, by which alone we enjoy all other things; These doe not interfere, but mutually assist and strengthen each other; and the sticking to the one, must not needs be a present and sudden relinquishing, much leise opposing of the other. To this Text therefore I keep my selfe, not intermeddling to weaken or strengthen, or any wayes to interrupt or disturbance their course who move in another higher Sphere; let us both keep to our own, and that is a point of Prudence at least if not of Justice and Necessity. Neither do I them, or their higher pre'ensions, any wrong, direct, or consequentiall: For a man may say, the silver Drachme was good and current Coyn, and yet not disparage Solomons Gold of Ophir: This Candle burning by me, has light and brightnesse enough to guide my pen, and yet it permits and leaves the Sun a more noble and glorious Planet. The accessse of a lesser strength does not infirm a greater; nor a prop of wood a pillar of Brasie or Marble; nor yet a favourable secondeing Law made here, That the God of Heaven shall be Worshipped, disparage the Bible, or Tables of the bosome, where the same was before engraven. We have many things in our Councils and Common Laws, which are in the Scriptures, if no more but this, *Do as thou wouldest be done unto*; which (1) hath been thought Law enough for a Judge; neither does the sticking to them There, say they are not Here, or infer a light regard of them. Who by a Lawyers pleading, a man hath broken our Law by Perjury, and is thereby guilty of high offence, can therby think the prohibitions of the Decalogue despised? or because a Judge layes hold of our Countrey Law to punish Theft or Murder by, can say, He vilifies the sixth or eight Commands by which a man is at Church and in conscience forbid to steale? There may be a Subordination, and

(1) Ex hoc mino  
Præcepto facis 'a-  
guet, unius, ræca  
sup' o' juss' off' red-  
deram; & neque  
en'm alio grauus  
que j' dicas libro  
opus fuerit. H'c  
so'is o' meminisse  
quæ sedet in alias  
j'c ex, nolle se alia  
am de elia prefera  
senioriam, quam  
de se ipso latam ir'  
volueris. Praefat.  
in Aluredi Leg.  
apud Lombard.  
Archai'on pa'ata

is,

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is, between Lawes and Rights, and Crimes and Things ; and the laying hold upon any of those of a lower range or series, were very ill interpreted a discountenance, much worse an opposition of the highest. Not disparaging therefore the higher Right, much lese renouncing it, (and it was needfull to make such expresse protestation) relinquishing it only *pro hic & nunc*, by no meanes disclaiming, yet least of all opposing it ; I lay hold of that my Text , *The Title of Civill Rigit*, directs and holds me to, by no meanes undervaluing or giving just occasion, it may be thought I doe undervalue the Golden Noble by this, that I think I have Silver enough currant Coyn to pay this Debt , and our Secular Laws will here with Us make out a Duenesse of Tythes by title sufficient, without troubling or borrowing any thing from the higher sphere of Divine, Naturall, or Ecclesiasticall.

Being thus then confined to mine own Circle, wherin I mean to keep my self religiously without trangressing; and like there to behold little but of Right, and Civil Right, and the Dueness of this maintenance of Religion intended. Thus to be asserted thereby, It may not be amisse, it cannot but be very expedient to premise sundry things of Right or Rights in generall, the nature , ground, rise, strength, and originall first growth of Them all , with this intent and purpote : That if we can finde the reason of All, we may the better judge of These : If we doe finde these to have the same strength and bottome to rest on, that all others have (to wit, humane paction and the powerfull word of the severing all-giving Law, which alone incloses all from the common ) in the same with others, we may conclude, either these have enough , or none have any ; for the same Cause produces the same effect alwayes wherefoever ; and if here be the same ground of right, there must be the same right also, why should it not ? Now to the top of that I thus propose to my selfe to aym at, I shall ascend as by so many steps; by these six following Propositions, beginning at the bottom , where all was left at first as in a wildernes of Community, and say as followeth.



# O F Civill Right.

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## C H A P. I.

### *Proposition I.*

**B**Y the Law of Nature all things are (1) common. No propriety ascertained or cut out to any, but all left as made in a common heap for the common use of all men: As beasts come to the water and drink, but ask no leave; or as (2) the Hoards of *Tartary* which depasture and stay here and there so long as their safety or entertainment like them; or, lastly, as some simple *Indians*, who not knowing the craft of appropriations, think themselves rich enough, in that every man hath every thing:

*nisi Deum generari ius sit omnia, ut postea omnibus communis esset, & terra foret omnia communis posse. Nam ergo ius communis generavit, usq[ue] ad ius foret privatum. de Offic. lib. 1. cap. 38. tom 4. page 11.*

And, upon th's ground, it seemes Aquinas thought it not unlawfull to re-enter the inclosure in case of a poore mans extream necessity, there having been a kinde of tacite condition at the beginning, that the fences should hold but till there were a necessity of (in part) removing them. So by that occasion All things return again to All men. *Ques. 66. Art. 7. Vtrum locis futuri propter necessitatem?* And much to the same purpose the more folide Hugo Grotius de jure *Belli & Pacis*, lib. 3. cap. 5. Sct. 6.

And Bellarmine: *Quod ad ius suum necessarium sicut omnia communis posse, sed ut per ius alium ius possit disponere homini prohibetur, sed ministratio de rebus a Deo creatus. Atque hinc est quod in articulo necessitatis non dicitur, negat est fuit, quia ex quocumque loco accipit unde vivat. de Bonis Operibus in part. lib. 3. cap. 12. Refpon. ult.*

(2) *Ine su loco non diu commorantur, rati gravem effe insolitatem diu in ordine loci habere. Ortell. Geog. Tab. 47. & vide Magist. Geogr. p. 223. & Heylin Microcosm p. 639.*

(1) *Nec hoc quidam secundum Naturam (faith S. Ambros.) speaking of the Philosophers opinion of the form of Justice, (sc.) to use what is common as common; private as private: ) Naturae enim omnia omnibus in commune profidit: Sic et.*

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(3) *Natura de-  
dit unicuique ius  
in omnia, h. c. in  
flame mere natura-  
lis, sive antiquam  
barbarum villa patris  
sese invicem ob-  
fringunt, unicuique licet satis-  
cere quicunq; us, &  
in quoq; nemo li-  
cet, & possidere,  
ut, suis omnibus  
g. & valibus & pos-  
teris. T. Hobbe de  
Cive, c. 1 Sec. 10*

(1) *Tib. El. 1. 3.  
(2) Verg. Georg.  
a which yet La-  
Hansau interprets  
only of an open  
Bounty; having  
no more of strict  
import than that  
of another.*

*Fiumini jam la-  
tio, jam fumina  
naturae thanas. I. 5.  
de latitiae cap. 5.  
pag. 172.*

(3) *In Octav.  
Act. 2.*

(4) *Eritis in Sa-  
turno vos omnia  
commissio & indis-  
cretio omnia, vel u-  
suum, ut etiā pa-  
tronum effici  
lukfin. 43 undo in  
Saturnalia Bo-  
norum communio.*

(5) *Ovid Met.  
lib. 1.*

(6) *Sunt avrum  
privatum nulla Ne-  
gurā; sed aut ve-  
ros compatiens, si  
qui nondim in un-  
eva universitate aut  
victoriis, ne quis  
delle perire fuit;*

*aut lego, condic-  
io, pallium, foro;*

*ex quo si us ager  
Arpinas Arpina-  
tum, Tufculanorum:*

*familisque & privatarum possessionum descriptio. Cicero de Offic. lib. 1.*

So man, *in puris naturalibus* (looking (3) beyond coalition into societies, and notwithstanding any divine law, which approves indeed (*à posteriori*) partitions made out, and strengthens them) at first, and as God and Nature left him, is Master of Nothing; but was to take what he had need of, and leave the rest, (a very Cenobite) and Another had as much right as He, and He no more right then Another, but He with them, and they with Him, were together to enjoy the Blessings of God in Common.

*Non Domus ulla fores habuit, non fixum in agris*

*Quiregeret certis finibus arva lapis,*

as the (1) Poet spake, with opennesse and community enough,

*Nē signare quidem aut partiri limite campum  
Fas erat, in medium querebant, &c.*

so (2) another: and the grave (3) Seneca,

*—Pervium cunctis iter,*

*Communis usus omnium rerum fuit.*

And again, and still smiling upon the Free and (4) Golden Age,

*—Nullus in Camposacer*

(5) *Divisit agros arbiter populis lapis.*  
*But by after acts came in Mine and Thine,  
Communemque prius, cœlum lumina Solis & Aure;*

*Cantus humum longo signavit limite Mensor :*

as the (6) Orator tells us accordingly, That nothing is by Nature inclosed to such or such a one in severall, but either by first seizure, as those that entred upon what was no ones; or by Conquest, as what the Souldier got; or by Law, Agreement, Com-promise, Lot, &c. and so is such a Field such a Mans, or such a Families. (7) Tertullian observed of his time, *Omnia apud nos indiscretas sunt prater uxores*, Every one had his wife to himself, but nothing else: (It were well if our charity or goodnesse would enable or permit us approach to so great happiness;) and of the new fresh inspired Christians tis written, No one said, that Any of the things

(7) *Apologer Sec. 19 pag. 15.*

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he possessed was his owne, but they had all things Common, Acts 4.34. and (yet wanted no one any thing, for) as many as had Lands or Possessions, sold and brought to the Apdlestes in bank, and distribution was made to each (in charity or equity) as he needed.

No more then this doe God or Nature intitle any to by name & singularly: Let great Possessors look to themselfs, and make much of after inducements (which alone have lifted up their Lordships above the level;) and preserv them, & endevor to keep them whole, and as well the whole as any part: For if the Bank be cut anywhere, the Floud may finde way thereby to run over all; if there be but a beginning to remove the bounds and lay open the fences that have severed Dominions anywhere, what is begun may proceed unluckily; and what has been done by any Men, may hap to be revoked as concerning themselves, and then poor *Codrus* is as rich as *Cresus*, and *A. B.* as great as any of the greatest.

But to proceed: Say I these things as a man only? <sup>not</sup> *as Spartoz*, private and fallible? Says not the Law the same also? Ask either of the three sister Queens; the Canon, Civill, and our Common Laws have shared in Government, some way or other of most part of the Christian world; and doe not they speak home or homeward this way?

The Canon first, a (2) wise piece, and a competent knowledge whereof doth with us half create a Doctorship: And set aside where it superstitiously directs about things not needfull, or lightly takes in the Errours of dark times, or politikely advances the Pope to an (3) universall indirect (4) perhaps direct Dominion, or blasphemously *tantum non*, advances him to an immense soveraignty; *Dominus Deus noster Papa*, is said to be in the extravagants: In other serious and sober pieces of much gravity and great use, and thought by many to serve very commendably toward the end it pretends to aym at; the well regulating and ordering divers emergent cases that may arise and become doubtfull in the Catholike Church. See then there not far from the be-

(2) See Sir Thos.  
mas Radley's view  
of the Laws.  
par. I. cap. 5. Sect.  
1. pp. 73.

(3) Vid. Cauf.  
9. qu. 3. Ca. 117.  
*Totius enim orbis*  
*Papa tenet principi-  
patum* Gloss.  
*partibus ad De-*  
*cem lib. 3 tit. 16.*  
*Noe est qui*  
*audiret dicere, Do-*  
*minus, cum ista fa-*  
*cilius pluri- com-*  
*petinetur, ad Es-*  
*trav. to tit. 4.*  
cap. a.

(4) Vid. Extravag. de major. & obel. cap. a. in fin. & gloss. postea subesse. ibid.

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\* Differ autem  
Ius naturale à  
ius civiline &  
Constitutio: Nam  
Iure naturali, Om-  
nia sunt co-munia  
omnibus; quod  
non solum inter eas  
servatum creditur  
de q[uo]d legatur,  
multitudine autem  
Creduntur uter cor  
um & anima  
ta, &c. verum  
etiam procedente  
tempore à Philoso-  
phiis traditis inven-  
niuntur. Vnde apud  
Platonem illa civi-  
tatis iustissimè ordi-  
natae ratiōne, si  
qua q[uo]d proprios  
nisi efficiunt: Iure  
vero constitutuimus  
vel constitutionem,  
hoc mecum est, illud  
alterum. Vnde  
Aug. Tract. 6. in  
Inan. Quo iure  
defendis villas  
Ecclesie? & Dec.  
1. dist. 8  
The place is in  
Aug. tom. 9. p. 25.

(1) Ex hoc vide-  
tur quod tantum  
jura humano ali-  
q[ue] a potestantibus  
& non divino.  
With answerto  
an objection.  
Vid Glos. num  
Iure Divino. 16.

(2) Mansuetus an-  
sequiam vires in-  
venirentur, omnibus  
inconveniens libertas:  
Nam sciebas a  
confite natura tua  
absque servitutis  
exigere. Non est  
habeas servitus, si bries tua non suisteret. As if a drunken mishance were the parent of this lasting incon-  
venience. Dist. 35. Sall. 14.c. Sexto die. Sall. Mansuetus. (3) Dist. 1.c. Iure naturali. (4) Glos. Al. ad c. 1 omnis Leges.  
(5) And though Dominion be by Nature, at large, that all is mans: yet the distinction or partition  
of Dominions, that such or such thing should belong to such or such a man, is from use or introduced  
civil compacta. Glos. portabefess. Extrav. 1. de Manu & Objet. c. 1. in fin. This

ginning, where we have, that (\*) The Law naturall differeth from Custome and (super-induced) constitution; for by nature All things are common to All, which was not only obserued of those Att. 4. but formerly among the Philosophers: Whence *Plato* counts that City best governed where none covets property to himselfe: But by the Law of usage or agreement, This is mine, That anothers. And *Gratian* proves it by a place of *Augustine*, *Jure Divino*, *omnia sunt communia omnibus*, (*Jure constitutionis*, *Hoc meum*, illud alterius, is the title of that prooife,) who speaking to those that thought themselves wronged by deprivation for Heresy, He asks: By what right they had their livings? of God, or Man? The one is in Scripture, the other in royll Lawes: Now whence, saith he, are (your) Possessions, but by the last? for by the (1) first, (*The Earth is the Lords, and the fulnesse thereof:*) He made rich and poore alike, and preserves them alike: But by mans Law we say, This is my Farme, this is my House, this is my (2) Servant. And why are humane Lawes the Emperours? Because by them God distributes their own to the people. Where the glosse is full, That Possessions are only founded in humane Lawes. And the Text againe, Take away Imperiall Constitutions, and who can say, This is my House, this is my Slave, this is my Living, &c: and to the Emperours Laws forbidding Possession to Non-conformists, some answering, what have we to do with Emperours? Nay, and what have you to do with Possessions? Replyes that Father, Quickly; for Possessions are by These: whom if yee renounce, your possessions are therein involved. This is full; somewhat dark is that before of (3) *Communis omnium possessio*: And before that, the (4) glosse makes a doubt upon the speech of invading anothers, *Nonne Jure naturali omnia sunt Communia?* How this? Is any thing anothers? And answers, True: as things are Now. Whereupon the note on the glosse; *Omnis sunt (5) communia Jure Naturali*: as plaine as can be.

This may be enough for one piece, pretending it self to be a necessary supplementall additament to the Law Christian, or drawing out the general rules thereof in particular expeditents (as severall cases require) for governing the Christian world : Next what sayes *Justinian*? He chiefly insists on one branch, indeed the matter of superinduced servitude, yet so as the length of his reason duely extended, will serve also well enough to hem in all other Dominion. In each part of his Compositions he hath somewhat tending this way. In his Institutions first, where servitude (he (6) sayes) is a Constitution of the Law of Nations, whereby, against nature, men are subject to the commands of others : (the very Syllables of (7) *Florentinus* in the Pandects before) *contra Naturam, id est, contra Jus naturale, cum eo jure omnes homines liberi sunt*, sayes the Glosser there: (for by Nature all are free) from divers Autorities. Nor are they impertinent : for in the next (8) title but one, speaking of Manumission, This freeing from power (saith he) derived it self (onely) from the Law of Nations, or agreement : for by the Law of Nature all men were born free, neither was releasing known, sith there was no such thing as Bondage. But after that by the Law of Nations this Bondage was brought in, then came there also along therewith possibility of Freeing. So now of one sort of men at first, there were thus made three; Servants, Born, and made free-men : (the very Syllables (1) of *Ulpian* in the Pandects again.) And tit. 8.de his qui sui vel alieni juris sunt: Servants are in the power of their Masters, which (2) power is of the Law of Nations: And (3) before, Captivity and Slavery are contrary to the Law of Nature; for by this Law all were free from the beginning: And this continued also to the Novels: For in that supplementall addition to all former provisions of *Code, Pandects, and Institutions*, The Law of Legitimation there tells us, that (4) Nature made

(1) *E. de Iustitia & Iuro. L. Manumissiones.* (2) *Instit. tit. 8. Sect. 1.*

(3) *Iust. cod. tit. 2.*

(4) *Natura servum & liberum non discribit, sed liberam hominis fecit problem: and a little after,*  
Neq; enim a principio, quando natura sola... faciebat, honinis (antequam scripte provenient leges) tunc  
quidam differentia naturalis, anq; legitimis, sed antiquis parentibus antiqui filii mox ut procedebant,  
suebant legitimi. *Et sic in liberis natura quidam liberos fecit omnes, Bella vero saevitatem adiuvave-  
runt: sic etiam hinc natura quidem legitimatis produxit lobos, atamen ad concupiscentiam diversio-*  
*naturalis eis im misericordia, Novell. 74. cap. 1.*

all.

(6) Lib. 1. tit. 3  
leg. 2. vide etiam  
Art. 1. Polit. lib. 1.  
cp. 2.

(7) P. de statu  
hominum.

L. libertas. And,

Quod attinet ad  
jus civile, servi

pro nullis haben-  
tur: non tamen &

jure naturali:

quia quod ad jus  
naturali attinet

omnes homines

equaliter sunt. Da  
diversis reg. Iur.

aut 1. 32

(8) Quare res (ma-  
numissio) à jura

gentium originem

sunt: ipsoe

cum iure naturali

omnes homines

liberi nascen-  
tur: nec esse

nota manumissio

cum levitus esse

incognita: sed

postquam iure

gentium servitus

involutus, secundum

est beneficium.

Manumissionis.

Et cum uno co-  
muni nomine

omnes homines

appellarentur,

jure gentium tua

homini genera-

elle coepit;

Liberi, & his

contrarium, Sec-

vi, & tertium

genus, Libertini,

qui desierunt esse

deinde infus libe-

re. cod. 5.

all children free at first, it was war brought in Bondage : Even so by Birth all were sons, and one as another at first, after-provisions made distinctions. And endeavouring soon after to collect and binde together all former resolutions on this great subject to be represented in our view, he both (5) repeats this Assertion (6), and Phrases, to Liberty, to be a restoring to Nature. Now that what is thus dispersed of freedom and servitude onely, may be enlarged by like reason to all Community and restraint, we are beholding to the Glosse on

(5) *Natura siquidē ab initio dum sūlōrum procreatiōnēs sancte, scriptis nō indum posuit leibis, omnes similes quidem liberos, similes autem produxit ingenuos. Primo namq; parentibus primi filii, similes autē legiūm à natura habent: bella vero & lites atque libidines & concupiscentia causam depoluērunt ad aliud schema; servitū tem namque invēnit bellum, Naturales autem castitatis casus, &c. Novell. 89, cap. 1.*

(7) *Instit. 1. tit. 2.* which stretches out one place, as all other may, thus, Wars and servitude are contrary to the Law of Nature, said the text; and what is meant by Wars? Manumission, Restitution, Rule, Dominion, and such other things, sayes *Cujacius* on the place: And upon the other of *tit. 3. §. 2.* Slavery is by the Law of Nations (8), therefore (he inferrs) Domination is from the same ; and therefore, say I again, not from Nature. Wherein the text also seems to bear him-out (and me;) for thus (9) *Hermogenian* in the Pandects. By this Law of Nations (whereby Manumissions were possible, as before) were Wars brought in also, Provinces distinguished, Kingdoms erected, Dominions settled, Fields enclosed, and many such superinducements, which Nature in her Dictates never acquainted with : the good wisedom of Man having found them out for quiet of societies, and the great goodness of God and religion approving these humane inventions.

(6) *Ib. cap. 9. & 10. fere. Liceat igitur (sic ut prædictimus) patri si legitimam non habeat subolem, filios restituere nature, & antiquae ingenuitatis Novell. 74 cap. 1. & offerte Imperatori precem, hoc ipsum dicente, quia vult Naturales ius filios restituere nature & antiquae ingenuitatis, & legitimorum iuri. cap. 2.*

(7) *Bella, caputates, servi ues, postliminia, manumissiones, ut facio' anti sunt hostium legati, Regna, Dominia, Obligationes, Acceptationes, Constitutiones, sunt juris Gentium. f. off. 13. Bella.*

(8) *Glosf. Constitutio juris Gentium, 4.*

(9) *Ex hoc jure gentium introducta Bellas, discret Gentes, Regna condita, Dominia distincta, agri termini positi, aedificia collata, commercium, emptiones, venditiones, locationes, conditio[n]es, obligationes infinita: exceptis quibusdam quæ à jure civili introductæ sunt. F. de Iustitia & Iure, L. 5.*

*Nam Dominia rerum sunt de Iure Gentium, and that Text alledged for it. Glosf. generali Iuri ad Cod. 1. tit. 22. 1. Omnes enijscumque.*

Yet farther, and from the same Volumns it is observable, that of that first universall freedom, some foot-steps are by the same Emperour allowed to remaine yet not cleane wiped out,

out, and of that naturall liberty of things, never yet brought within the bondage of any accessary restraint, some evident both signs and instances: For, (1) *Quadam naturali jure sunt communia omnium*, (yet in despite of any offered inclosure) *quedam publica* (*id est*, *populica*, sc. *omnium populi*, as the glossie) *quedam universitatis*, *quedam nullius*, *quedam singularum*, so and no more. And hee gives instance in Ayr, water, Sea, Shore: who has endeavored to (2) inclose and appropriate these, or not given to every man to make use of their bounty, as his occasions should bring him to need them? The River to row, the Haven to entertaine, the Bank to Land, Theaters, Temples &c. Hee might have added also High-wayes, which have never yet cast off their opennesse of former freedom, or come within the bonds of any private restraints; but in all Grants been still reserved and retaine to themselves yet what they were at first, and are, and ought to be, *via publica*, without any allowed restraint, and for every mans use that can use them. Crafty appropriations have or can no more hedge in these and some other gifts of God and Nature, (or God by nature) then the rich can impale to their own use the Sun-beames, or cause the same light not to shine to their poore Neighbours comfort, as well as their own, or the enriching raine to fall upon Their own Land, and leave the poore mans barren.

Thus the current of Justinians works: That wise Law that kept the World in awe, durst never, never did declare against all Community. Plainely it speaks things left at first Common, Servitude is by after-inducement; Property as Servitude, and no such universall restraint yet; but some things remaine as free as the Wood for the Bird to come and sing on what branch she pleases, or as the Sun-beames for which the poore man payes no rent, or dreads no quarter day; or like the Fountaine to the wearyed Passenger, hee may drink what he will, and leave the rest, and no one questions, interupts or molests him.

Come we now nearer home; and what said here our Doctor Bratton? he was a great Civilian; and some say not only

(1) Instit. 2. de  
reorum divisione  
in Prince.  
& F. de divisione  
reum. l. 2,3,4,5.

(1) Understand,  
in the Empire:  
for some kinde of  
appropriations of  
some of them has  
been wch us  
made to the  
King, as shall  
be laid.

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only so, but such, a Doctor of the Civill Law, to bring home (as he has) and mixe many of the *Effata* of that more Civill Rule with our barbarous Customes. 'Tis true, he makes often use of the *Code* and *Pandects*; and that which is more, many of his Rules are borrowed *verbatim* from them, and so does his Follower, and in most transcriber *Fleta* also; though I wil not enter much dispnte of their Doctorships. They are to us a kinde of (1) Oracles, and borrowing their Inspirations from where before (wherein they were at least well studyed, if not graduated,) wee are not to wonder if they wrote much the hand of that Copy according to which we see they did practice to write. The former first in very perfect imitation, instances chiefly, as *Justinian* did, in superinduced servitude, which (2) he sayes, is by the Law of Nations, whereby against Nature, one man is subject to another: And the like assertion he lets fall (by the way) not long (3) after (*potes tas Dominorum in servos a Jure gentium est:*) with the same enlargement to all restraints as the Civilian taught: (4) Some things are common, some publike, some Corporations, some no ones, and some every ones: And as by Right remaining yet Common, and according to Nature, he instances in Water, Ayre, Sea, and Shore: which retaine their primitive universall freedome, and were never yet in bonds to any.

*pagatumque.*  
Tamen enim ob veritatem ac interuenientes quæ in equitate sunt juris mutationes admodum multiplices; autoritatem in quamplurimis jam non praestet ejusmodi quæ decisionibus, Iudicis Consulacionibus per se solù sufficiat, innumera nihilominus continent, quæ aut etiamnum manent integra nec omnino abrogata, (ut in materie maxime feudali, criminali, &c.) aut quæ mores majorum legiue avitas mutationibus ejusmodi priores eosipius offendunt. Atq; ita certè tam autoritatem è qua iuri interpretatio pendeat eos habere manifestè in disputationibus iorenibus scholasticis est agnoscendum quam Ornamento illis. *Sedlens. Diffell. ad Fle. cap. 1. Sct. 3. p. 454.*

(1) *De Rerum divisione.* lib. 1. cap. 6. Sct. 3.

(3) *Lib. ed. cap. 9. sct. 3.*

(4) *Lib. ed. cap. 12. Sct. 4. & 5.* Add wherecombats a little before: *Manumissiones anima juris gentium sunt;* *Ea autem Manumissio datio libertatis, i.e. detectio fecundum quidam quia libertas quæ est de jure naturali per jus gentium auctor non potuit, licet per jus gentium fuerit ob uscara lura enim naturalia sunt immutabilia.* — Item ex hoc jure introducta sunt Bella, cum ad tuitionem patris inducuntur à principe, vel propulsantur violentia. Ex hoc etiam jure gentium differat, i.e. separare vel dividere sunt gentes, Regna condita, & dominia distincta. Et non sunt dominia de novo inventa de jure gentium, sed ab antiquo, quia in veteri Testamento, aliquid erat meum & aliquid tuum, & unde tunc erat prohibitum ne futurum heret, & etiam tunc præceptum fuit, ne quis mercenarii sui regneret mercedem. Ex hoc etiam iure gentium agris sunt termini positi, adiuncta sunt collata & vicinata. — Et generaliter ius gentium se haber admodum contractus, & ad alia plura. 16 cap. 5. fol. ult. Much to the mind and words of what was before from *Rome.*

*Flet. 1*

Fleta treads for the most part his steps, and it may not be pleasing to lead the same dance over and over, or to represent as a new Show, that which hath in it nothing of variety and novelty ; wherefore I only (1) referre to him. And so for Dr Cowell late of Cambridge , who professing to mould our Laws according to the patern of the Imperiall (*Institutiones Juris Anglicani ad methodum & seriem Institutionum imperialium composite & digestae*, is the Title of his Book:) In the second, third, and fifth Titles of his first Book , and first of the second , has the same parallel things, and near words ; shewing indeed, that the Laws were parallels ; and, which was his Plot, in these things both alike. I may not have omitted the Student to his Doctor; the Author is both Grave and serious , and were he in transmittable Language, might gaine with time, and more Authority after some Centuries then he has in present : Besides other places, He delivers himselfe in his (2) Book thus : It is to be knowne , for satisfying the doubt how the property of a mans goods may be altered (as in an Out-lawry) without his consent ; that, The property of Goods (he might have said, of Lands, the reason is the same ; I beleive he meant both,) be not given to the Owner by the Law of Reason, nor by the Law of God, but by the Law of man, and is suffered by the Law of Reason, and the Law of God so to be. For at the beginning All goods were in Common ; but after they were brought by the Law of man into certaine Property, so that every man may know his own, then were conditions assinged; and so he proceeds to resolve his doubt, by that one condition (here) was then, that if a man were Out-lawed, he had nothing as a man not to be trusted, or an enemy &c.

Many other such plaine Assertions are partly in This, and These, and partly in other our next to Oracle-Lawyers, which joyned to what before; give, if not assurance, much probability that the truth is , and the nature of things was at first, as I say, or else there would not have been such conspiring testimony. Agreeing Witnesses is among the strongest of proofes , and a likely evidence that they all speak the truth, who all speak the same ; and as in neighbour Buildings

(1) *Vii.lib. 1.*  
*cap. 1. Sect. 1.*  
*& ca. 5. Sect 3. 6.*

(2) *Dial. 2. cap.*  
*2. fol. 64.*

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their help and assistance is mutuall, and ones strength strengthens another ; so here. The grave Rules these have been, and prevailing Mistresses, if I may so say, whose words have been obeyed to sway a good part of the past and present Christian World: and they should not have been empty Rattles, (*Vox & pratera nihil*, as he said of the Nightingale,) mear speeches or noyse that went for nothing : The Canon for the Church, the Civill for the Empire, and our Civill for our Monarchy ; what can we look for more, or more Authoritative, after so great aud honourable attestations ?

Neither hath the Realty of things been otherwise in existence sometimes, then according to the matter held forth in these Rules : There have been and Are, that have lived and Doe live accordingly : persons so composing themselves that they remaine happy without inclosure or guard , home or own, and they never saw yet reason (which they obeyed) to remove them from the benefis, (esteemed such,with all inconveniences) that they found and had in this they still thought their most expedient Community ; some simple Indians retaine it to this day ; they will not exchange their Liberty for our Wealth, nor their native , as we count it barbarous freedom ; for whatsoever we esteeme better, richer, surer, and nearer, comming unto us under the name of our magnified Civility. They have not our advantages, so neither our inconveniences , our enriching Property,so neither our emergent vices and troubles. Take away this, there would be no place left for many of those we call Crimes that trouble the World, nor temptations to others, which it might be our happiness to bee free from , and such as would perhaps goe much toward the balancing of the benefit of our Riches.

Besides, the Primitive Christians lived Thus too : Wee  
 (1)Vid. Act. 4.34  
 & compare Euseb.  
 Hist. Eccles. lib.  
 2.cap. 16 pa. 17.  
 (2) Glorifying God for your  
 professed subjection to the Gospel of Christ, and what follows? *καὶ απλότητι τὸ κοινωνίας εἰς  
 αὐτὸς καὶ εἰς τοὺς μαρτύρους*: for the simplicity of your Communion to the Macedonians and All, 2 Cor. 9.13.

and

and did not build so evident certainty anywhere for awhile, as in a flat Level. Give us their simple Charity, we should do the better without our quieting boundaries, or enriching property; make us so meek, humble, gracious, & disposed to be helpful to one another, (3) contented with any thing, charitable to All, as they were, we should the lesse misse, or perhaps not complain of any misse at all of our troublesome wealth, nor the scale swaying to any sensible incommodity by that losse, taking in the amends of our then from many vices and troubles most certainly freeing Community. For, (4) Covetousness would be a name, theft not in nature, wrangling Suites vanish, fraud remove, guile be a stranger, no injuries known or possible. Those many sprigs that shoot out of that accursed root, *Amor sceleratus habendi*, would not only be lopped off, but the root it selfe, the disorderly affection taken away, even to an impossibility; and with no riches, much innocency, great content, strange quiet, a banishment of many vices, and plenty and enough to every one, with our first primitive simplicity.

*upon inclosures, and in Iupiters dayes, when Saturn was gone: Ille malum virus serpentibus addidit atris, Predarique lapos iusti &c. id est, odium & invidiam & dolam inficit hominibus, Id ibid.*

Though I confess, this was either not generall, or lasted not long with those Primitive Christians neither, for by *Act. 11. 29.* we have private abilities fruitfull in beneficence; and Collections for the poore, which many wayes supposes propriety, 1 *Cor. 16.* & 2 *Cor. 8.* and relieve even amongst brethren (1) *Jam. 2. 15. 16.* 1 *Joh. 3. 17.*

*distributio donorum de qua dixi. Creverat enim numerus Christianorum ad plurima millia inter quae impossibilis erat haec communio. Cornel. a Lap. in Epist. Iacob. 1. 107. 27 p. 72.*

But the meek *Essenes* continued so; whose precepts (many of them) hold much correspondency with the ancient Christians, and if they were not such, or their forefathers immediate, many have been deceived (2) who thought them so. Now these trod in the steps of *Justinian* *regis nro* a.

*ram. 1. Euseb. Histor. Eccles. lib. 2. cap. 15. 18. Huic libro Philonis (de Essenis) Smidas titulum subiungit; de vita Christianorum. Christoforus annos. Ib.*

(3) Malebant  
tenui contenti  
vivere cultus;  
as *Cicer. of hu-*  
*manus: quod*  
*est proprium no-*  
*stra religionis.*  
*Lullian. de Iufi-*  
*tia. lib. 5. cap. 5.*  
*vid. Lc. 6. 3. 24.*  
*Ph. 4. 11. 1 Tim.*  
*6. 6. 8. Heb. 13. 5.*

(4) Nondum ve-  
fano; rabies nu-  
daverat enles:  
Nec consanguineis  
fuerat di-  
scordia nota:  
*Thras. frib. & bus-*  
*afer. Tum Belli*  
*rabies, & amor*  
*fucifile habendi,*

(1) Jam enim  
cessarat illa com-  
munio & di-

(2) So St. Irenae,  
expressly Catal.  
Illustr. virorum in  
Ph. lione. p. 102.

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and from all servility at first, which they hated as unnaturall and unhumane, they went on to place in the same cause All dominion or domination. Two sorts of them there were; The Students, and the Practiques: (I compare them in some things, with the Secular and regular Priests; some are for Conversation, other should be more for Medication and Contemplation;) but both of them went together in This same way: Take account of them of those are likelyest to enform us. *Philo an Alexandrian* (3) Jew, and I think Priest, tells of the (4) former: That they are not served by Servants, which they account quite besides natures intention, who made all Free: It was the greedy iniquity of some (5) domineering Tyrants, who having gotten power into their hands (perhaps intrusted) changed their rods into Swords, and turned their own Canon given for defence against their own Subjects, and having gotten their fellows down, kept them (by strength only of their cruell clutches) and of no more right then force, continued the Usurpation over their subdued fellows. With them, no such thing; for no servant, but all free; any farther then they did in love serve one another: So the service was performed (mark, their servants then were in lower condition then ours; slaves or worse, which made the condition seem to soft and mercifull men so unreasonable and hard) but by no Tyrannicall constraint: the younger served the elder, they took care of the younger, each in love; and no feare, scarce awe: But every one made necessary Offices his voluntary duty, and thus service with no commandement. This is the substance; I stick not exactly to the words: And for the other sort, the same Author in another Book; Servants among them

(3) Natione Ar-  
lexandrinus, de  
geestate Sacerdo-  
tum. Heron.  
Catalog.  
Vbi paulo super-  
perius.  
So in the Pre-  
face to Philo's  
works p. 1.

(4) In lib. de vi-  
ta contemplati-  
pa.696.

(5) Very pathet-  
ically described by  
Lac. an Es. in Non-  
tanum enim  
non parcipa-  
bant alii in  
quibus ali-  
quid affuebat,  
sed aliena quo-  
que rapiebant,  
in privatum lu-  
crum trahentes  
omnia: & quæ  
antea in usus  
hominum etiam  
singuli labora-  
bant, in paucos  
rum domus con-  
ferebantur. Ut enim servitio caeteros subjugarent, in primis necessaria vite subduere, & colligere cepe-  
runt, saque firmiter conclusa servare ut beneficia cœlestia facerent sua, non prop er humanitatem que-  
nilla in ipsis erat, sed ut omnia cupiditat & avaritiae instrumenta coherderent. Leges sibi etiam  
iustitiae nomine munitas, iniquissimas, in iustissimique fanxerant, quibus rapinas & avaritiam suam con-  
tra vim multitudinis tuerentur. Tantum igitur auctoritate, quantum viribus aut opibus, aut malitia  
prævalebant. Et quoniam nullum in his iustitiae vestigium fuit, cuius officia sunt humanitas, æquitas, mi-  
sericordia, jam superba & cumida iæqualitate gaudiebant, altioreisque se ceteris hominibus fatel-  
litum comitatu, & ferro, & insigni ueste facebant. Hinc honores sibi, & proprias, & fates  
invenerunt, ut securium, gladiorumque terrore subnixi, quasi jure dominorum perculsis nec paventibus  
impaterent. lib. sec. cap. 6.

(faith (1) he). they have none but they do (2) in love (as the other) serve one another. They hate dominion both as unjust and impious, as clean contrary to Natures law, who made all men equal, not onely in name, but in reality. Joseph the son of *Matthias* gives the same (3) account ; and (4) others : and for the inlarging this restraint from service to any Dominion else unlawful, as *Cuiacius* did, very pleasing is that the last named Hebrew Priest (5) recounts of them in his History of the wars of the Jews : They contemne (faith he) riches, and all things with them are common , neither is any among them richer then other. They have a law among themselvs, that whosoever will follow their Sect (compare that of Christ with it, Luke 14.33. *Verily, verily, I say unto you, whosoever forsaketh not all that he hath cannot be my Disciple ;*) must make his goods common to them all ; for so neither any among them shall seem abject for Poverty, nor any great for Riches ; but they have fitting equall Patrimonies as brethren. They hate Curiosity, &c. They have among them Procurators to oversee, (the very picture of the after-Cœnobe, and according to the import of that word) and use all things among them for their common benefit, and every one seeketh the good of all (compare *Phil. 2.4. Minde not every one his own things, but every man also the things of others :*) and those (Procurators) are chosen from among themselvs by common consent. They have many Cities, and if any of their Sect come unto them from another (6) place, they give him any thing they have, as if he himself were owner thereof. (Let the Catechumene communicate with his Catechist so, *iv πᾶσι, in all things. Gal. 6.6.*) And, in brief, they go in boldly to those whom they never saw before, as if they were familiarly acquainted with them : And therefore when they take a journey, they only arm themselvs against thieves, carrying nothing else for their journey. (Compare again that part of our Saviours directions to his Commissioned and Itinerant Sanhedrin, *Luke 10.4. Carry neither purse, nor scrip, nor shooes, and salute none : and into what house ye enter, first say, Peace, &c. and in the same house continue eating and drinking what they bring, &c. but more plainly to his Twelve,*

(heads .

- (1) In lib 2.3d  
omnibus probis li-  
ber, p 6-8.
- (2) as Gal.5.13.
- (3) Antiqu. Iud.  
lib.18 cap.2.
- (4) Montagues  
*Adl. & Mon. cap.*  
7. fol. 73. &c.
- (5) lib 2. cap.7.

(6) Patent eo,  
rum fidelitatis nos  
minibus etiam  
advenis idem ini-  
stitutum servantis  
bus. Omnibus  
unum est prom-  
ptua ius, unde  
vestitus & mensa  
communis sumi-  
tur, &c. *Phil. lib.*  
vol. pag 679.

## Of Civill Right.

(heads of the Tribes, and each a resemblance of the Hebrews Policie,) *Provide neither Gold, nor Silver, nor Brass in your purses, nor Scrip for your journey, nor two Coats, nor Shoos, nor Staves,* Matth. 10.10.) In every city one is appointed to take care of such guests, and see they want not cloaths or other necessaries, which they never change till altogether usefull: (yet fear no want, for they have a Wardrobe everywhere whither they come :) Amongst themselvs they nor buy nor sell, but he that hath what may pleasure another, imparts it, and so taketh without leave of him whatsoever he needeth. Their labour is great to maintain this expence: their fare the same, eaten in publick, and with much reverence and devout thanksgiving: and though in all other things they are chiefly tyed in obedience to their Governours, yet in giving they may may be as open handed as they please, save to their kindred, where they must have leave of their Supervisors.

*2 Cor. 8.10.*

Is not this a strange happy life! beyond rich! obscuring the glory of *Cesar* and *Craffus*! if not what ever else is here among mortals! and like to last too, by their perpetually supplying industry. Are they not more admirable for this, saith *Philo*, then for any wealth and abundance? I confess I was fain to stretch my patience much to go on so far reciting, being like to stop many times by the way, my affections indeed scarce suffering my intellectus to make their orderly paces forward; for I never saw, me think, in all my life any thing more admirable, or so much toward the best on earth, and beyond Royal and Imperial. And all this with litttle, with nothing: as the Apostle speaks, *Having nothing, yet possessing all things.* Give us, I say again, but gracious hearts, contented and humble mindes, lowly affections, and true Christian qualifications, fearing God and hating Covetousnesse, and we might be soon thus rich all, beyond the wealthy; All the poor in the world as their Lords, (and yet they never the worse) for, (no one greedily griping any thing) every one would shortly be Lord of all things. And to shew that this may last, (if we had but truely loving and not self-seeking hearts, such pliable and humane mindes, as men may have) the same *Joseph* tells us, that the same *Essenes* kept it from all

Antiquity,

Antiquity, being herein, saith (1) another, like the Pythagoreans, who held it also in their way, and yet wanted some good principles tending this way, that were both in the *Essenes*, and are in our Religion.

(1) *Goth. Ant.*  
*sig. Hebbel 1. cap.*  
12. pag. 57.

Behold here this speculation reduced to act, that what I said may then be, because it has been, and is: both heretofore and now the stage of this world represents examples in being to every ones view and consideration. Neither doth this contradict the Scripture: we shewed before thence some glimpses of light rather to countenance it, but there is nothing sure that forbids Community, or commands that Separation which breeds propriety in either page of the Old or New Testament. For the Old first; where the Story of the Creation tells us indeed, (2) The earth was made, established, & adorned, and the Parent of the Donation(all that was) that God blessed Man, and bade him Multiply, and have Dominion over the Fish of the sea, the Fowls of the air, and every thing that moveth upon the earth, with Herb bearing seed for food, and Tree bearing fruit for meat; and *Adam* particularly put into Paradise: But what parted place any one should have, or the fruit or royalty of so much ground with exclusion of others; or that a partition should be made, One to have This, Another That, this we read nowhere. After when things were (as it appears after) separate, (for *Cain* and *Abel* had their severals, *Gen. 4.*) and after that again confounded by the Flood, the following restitution to former state, if we view the renewed (3) patent of the supreme Lord, had not much more then the former, but spake much in the free and general language of the first donation: And if *Noah's* Posterity had after any Severals, (as we know they had) they were left to divide by humane discretion, and each to have no more then what by the Providence of God their own wisdom could mutually ascribe to one another. Which was done, *Gen. 10.* (Hitherto we finde no *Jus Divinum* what every one should have;) for the Islands were divided, and 'tis shewed by whom, *ver. 5.* and in *Peleg's* time the land (which I take to be the *terra firma*) *ver. 25.* (and *ver. 32.*) whence he had his name of *Peleg*, that is, *Division*. After what was in

(2) *Gen. 1. 28,*  
29.  
Deus humano ge-  
neri generaliter  
conculit ius in res  
hujus inferioris  
nature statim à  
mundo condito,  
atque iterum  
mundo post di-  
luvium reparato.  
Hinc factum ut  
statim quicunque  
hominum ad hanc  
usus anipere pos-  
sit quo vellet, &  
qua consumi po-  
tentiam consumere.  
*Gen. de Iux. Bel.*  
*lib. 1. cap. 2. sect. 2.*  
pag. 127.

(3) *Gen 9. 3.*  
*Every moving*  
*thing that liveth*  
*shall be meat for*  
*you, even as the*  
*green herb have I*  
*given you all things*  
*&c. So far from*  
*giving any hint of*  
*Appropriations,*  
*that from things,*  
*from they are here*  
*call down in a*  
*heap, come fetch*  
*argument for a*  
*Community: as*  
*in Bellamine*  
*de Bonis oper. in*  
*partic lib. 3. c. 1.*  
*Ecce nō ob-*  
*fscera rerum pla-*  
*nē communio[nis]*  
*ve[st]igia occurring*  
*in donatione illa.*  
*Numinis, Gen. 9.*  
*2. saies Mr Selden*  
*Mare Clavis lib.*  
*1. cap. 4.*

## *Of Civill Right.*

in the promise to *Abraham*, or Levitical Law, or execution in the Book of *Joshuah*, all know; but nothing to our purpose. Come we then to the New Testament: Is there required any such thing as this distribution, or bounds set, or appointed they should be set, what should be whose? If it be, 'tis very obscure, and the lines so dim that mark it out, that they and it are by any ordinary eye very hardly discernable. Our Saviour bids, give to the Poor, and to *Cesar*, and to every one his own, and many such things, supposing Propriety, but then the Propriety was before; He nowhere raised fence, but intimated and insinuated it should be kept.

\* John 6. 15. railed fence, but eliminated and annihilated so as to be kept. They would once have \* made him a King, whereby he might have grasped dominion into his own hands in gross, which he might have afterwards given out by retaile : But this he peremptorily (if not scornfully) refused, because (1) His Kingdom was not of this world. The manner and course of his life we all know, and that we must make the best of it, to advance it above Indigency. He often complaineth he had not a house

(2) *Math 17.27.* Observe: And this he to put his head in, and was fain to (2) create did that he might be able to satisfie an un- as it were a doller to pay his tribute: so little just order: for the children were free, of he medled with wealth or worldly Possessi- whom he was: So far from countenancing the establishing of any new Power he might ons. There was some of this very work seem to set up, that merely because his quiet- brought unto him, an (3) Inheritance in  
*σκαρδαλίτων*) he readily submitted to gross, which he was requested to be so chari- the unjust pover that was. Sure his King-table as to divide, to part strife between bre- dom is lealt of this world and worldly Do- minion. As sure his Religion rightly taught, thren; but he would not intermeddle for that or Power duly used, will have no opera- reason which also constantly swayed with tion to hurt any Powers, if just, be they with him in his whole course, he would be no what they will: Be subje<sup>t</sup> to humane Or- dinances as yee finde them, is the pith medler, no divider of Inheritances. He did of the whole; Be contented and quiet, much not finde any fault with the thing done, for- lick. bidding it should be put in practife by others.

(3) Man, who made me a Judge, or a Divider over you; Luke 12:14. To decline what in the same express syllables, (as it just measure of his Acts and Words heeded: is in the *Supradictum*) was objected to Moyses, for, (argue from his silence) he laid not the *Exod.* 2:14. *Consenserunt date Precepta genera-  
lia, que ad res quasq[ue] accomodari a voluntate  
facilius posseuerit, singulari[m] negotiis me non im-  
miserint.* Grotius ad loc.

to do what they should think good, (which is enough against all

all Levellers) and he approves and ratifies what they shall do for their convenience, by the same reason for which he would not divide, for neither way would he meddle: Nor should the Court-Christian interpose in secular Affairs, or Religion disturb the quiet world, but leave things as they are found, and let worldly men dispose as they will their worldly Inheritances. Considering (in our depraved estate) the Corruption of our Nature, it can hardly be conceived how we should do well, or frame to quiet (so many as there be of us, and of manifold mindes and tempers) without partition, which might render it necessary he should (*à posteriori*) approve those by Laws the Community of men shall make for quietnesse and stinting the Common, which he does in submitting, and commanding to submit to the Powers that were: But that he should take the matter into his own hands to formalize properties, or erect or give order for any set Courts to order or dispose of them: This I believe will never be made good from any thing He or his Apostles did, or 'tis said, that they either effected, or intended, or gave any necessary command for any such thing, or so much as that Partitions or Proprieties must be, from any leaf or line of the Old and New Testament. They may be, as shall be said next, and these do not contradict but confirm; but that they should and ought, this is not shewed.

Wee see then, as to the first Proposition, that Propriety is not necessary, nor was it natural: The Canon, Civil, and Common Laws found all left in a Community: some simple Nations continue so still: the first Christians began in a level: The *Essenes* held it up long with great applause, nor is any thing in Scripture found in prohibition of continuance, if we had but gracious humility, and true love to make us capable of so great a happiness. But yet then we are in a wilderness: And what must we needs stay there? Nature indeed made not, commanded not partitions, nor God (the revelation of whose will is wholly spent at utmost in toleration.) But may not the wisdom of man proceed further by Gods permission? though not *ex vi precepti*, by force and impulsion of any strict command, yet by taking the leave, seems given, in that

(1) Ratio nihil  
aliud est, quam in  
corpu, humanum  
pars divini Spiritu  
tis mersa. Sem. ep.  
66.

it is not denied : Questionless, yes, Humane (1) Prudence is a ray from God, shining dimly in the bottom of mans earthly heart, and has not hitherto directed all men amiss that by the light thereof have found out any Good ; their own, or that they had an own, or that an own was, or might be. God loves man so well, that he loves every Good of man : the Good of Society, the Good of Order, the Good of Peace, the Good of Benefit, even to that outward Bestial part, whereof yet the divine Soul is a blessing and sanctifying inmate. All which Goods being so nearly concerned and highly advanced by, This is Mine, we cannot look upon our good God as carelessly neglecting, or enviously nilling that man should reap any fruit or benefit of that wisdom (which is also his gift) whereby he is enabled to finde out any of these Goods so much for his glory ; whence, with much likelyhood, ariseth this second Proposition , That although God and Nature left things at large, yet

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There

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## C H A P. II.

## Propos. 2.



Here may be impaling (2) propriety ; for else much of the Good even of Good things would be lost ; the strong ('tis like) would tyrannize over the weak, the lazy partake as much fruit of his vice, as the industrious of his diligence ; at Harvest, he that laboured should reap no more then he that loytered ; and supposing the most evidently seene corruption of our nature , that (3) which should be Every ones, (to take care of and enjoy) would be No ones : Nor could confusion but be the fruitfull mother, bringing forth many daughters worthy her selfe. Besides, argue as Christians : The Law would be superfluous, the Commandement evacuated, *Thou shalt not steale*, Nothing ; for there woud be nothing to steale, or have. No poverty, no riches, no purloyning, no restoring, no fraud, no injury, no wrong, no right, which are all founded in *Meum & Tuum* , & would be taken away even beyond the very roots, to an impossibility, if these be taken away. No charity to Neighbours, no hospitality to Strangers, no bounty to Friends, no more then most magnificent Christian bounty in relieving Enemies, if &c. Yea, the exercise of all Christian and morall vertues, that act about giving and receiving, were not only suspended, but presently deprived of their very being. No making bags which wax not old, which our Saviour

(2) Though se  
necessity all is still  
loose positive, yet  
for Dominion, only  
negative, sc. that  
they are not alio-  
ally divided, sed  
tamen permisum  
est ut div. deren-  
tur, si id ipsi ge-  
neri humano vi-  
deretur expedient.  
Quemadmodum  
cum paterant-  
rias moritur, &  
filios in commu-  
ne relinquit ha-  
redes hereditas  
quidem est eis  
ex testamento  
Commonis, sed  
negativè, non  
positivè : Et  
ideo nihil pro-  
hibetur, quo mi-  
nus eam inter-  
se dividant &  
una pars uni-  
us, altera alte-  
rius efficiatur  
proposita *Bellarum*,  
*de bono oper. in*  
*partic. lib. 3. cap.*  
11.

(3) Minimè au-  
ten utile homi-  
nibus sicut quod hujsmodi habuerint in *Omnia j:is Commune*. Nam effectus ejus juris idem penetit,  
ac si nullum omnino iur. extiterit. Quanquam enim quis de te omni poterat dicere, *Hoc meum est,*  
*Eius tamen ea non poterat propriet vicinu. qui equali jure & equali vi præterebat idem esse suum.*

*Th Hobbes de Cive, cap. 11. sect. 11. & usq; de cap 2. sect. 3.*

*Luke 12.33.**1 Cor. 16.**1 Tim. 6.17.**Philem. v. 18,19.**1am. 2.2.*

counselled : no collection for the poor Saints which are at *Hierusalem*, which the *Corinthians* used : no laying of a good foundation for the time to come by rich distribution, which *Paul* counselled ; & he was himself superfluously carefull of paying that debt of *Onesimus* to *Philemon* ; he neither did, nor, as things were, could pay, because he, nor any body else, had any thing to pay. A hard word for Creditors, there could be no paying of debts : An impoverishing word for States, farewell all Tributes : The rich mans gold Ring and costly Apparell had been nothing else but a crime, or a gracing encroachment upon others Rights, which yet *St James* blames not, but preferment in Religion hereby : And, the poor man an impossibility, and empty name, a Nothing, forasmuch as poverty is by comparisons, (*felix nemo nisi comparatus*, nor yet miserable:) and this must be with the Rich, which yet is not, nor indeed One nor Other, nor Any one that has Any thing. In a word, all Sentences, Admonitions, Exhortations, Rules, Decisions, suppositions of Scripture everywhere could nowhere take place, unless the Community left by God and Nature, might be ascertained and severed by the following prudent constitutions of men, and after-Lawes ; and a good part of the Book of God would bee but an empty Letter, without sentence or fence, if all those words stood vvoid of meaning, which doe not require, but suppose appropriations. Take together what *Mr Rogers* has, plaine but substantiall upon the 38 Article of the Church : The Article it selfe, is in direct affirmation of what we say, *That the riches & goods of Christians are not common, as to the right title and possession of them, as the Anabaptists vainly talk, though every man be bound to distribute largely* : (agreeing herein with the 65 Article of the Church of *Weland*:) upon the first position, whereof thus he : *Against Community of Goods & Riches be all those places (which are infinite) of holy Scripture that either condemn the unlawful getting, keeping or desiring of Riches, which by (1) Covetousnes, ther be a fornicator, or covetous, &c. with such eat not, 1 Cor 5.11. Covetousnesse, let it not be once named among you, as becometh Saints, Eph.5.3 Beware of Covetousnesse, Lk 12.15. which is Idiotry, Col.3.5. the root of all evil, 1 Tim.6.10. Let your Conversation be without it, Heb.13.5.*

If any that is called a brother be a fornicator, or covetous, &c. with such eat not, 1 Cor 5.11. Covetousnesse, let it not be once named among you, as becometh Saints, Eph.5.3 Beware of Covetousnesse, Lk 12.15. which is Idiotry, Col.3.5. the root of all evil, 1 Tim.6.10. Let your Conversation be without it, Heb.13.5.

(2) Thee every,

(2) *Thee every, (3) extortion, and the like wicked means many do attain: or doe commend (4) liberality, (5) frugality, (6) free and friendly lending, (7) honest labour, and lawfull vocations to live and (8) thrive by:* All which do shew that Christians are to have goods of their own. Thus far Mr Rogers according to his Text, of which thing there was so much regard that a little before the composition of those Articles, it was intended to have been marked for an Heresy to be of a contrary opinion: sc. in the intended Canon Law by vertue of some Statutes in Hen. 8. & Edv. 6. time: where if the 2. had proceeded, as in part they did, and their conceptions received life, and quickning power by setting to the Seale of due and lawful Authority, it had been then (9) the 14<sup>th</sup> of the heresies there to be condemned, to maintain Community. But those Canons were onely cast, not mounted, not ever yet of power to do any Execution in this Church or State: But others have plainly, fully, and actually (10) spoke it out both heterodox and heretical. Bishop Hall long since preached with applause enough upon 1 Tim. 6. 17. that certain Hereticks, called the (11) Apostolicks, before St. Austin's time, in his time our Country-man (12) Pelagius (or (13) Morgan, for that was his true name here, because he dwelt by the Sea, at least the name imports so much) and since divers Separatists have maintained Community, al-sufficiently confuted by the word of his Text, *Charge the Rich.* 'Tis also laid to the charge of the Manichees by S. Austin (14) of Julian the Apostle, by and namely those of his own household, he deniyeth the faith, and is worse then an Infidel, 1 Tim. 5. 8.

(6) *From him that would borrow of thee turn not away,* Matth. 5. 42. *Lend, looking for nothing again,* Luke 6. 35.

(7) *Let him that stole steal no more, but rather labour that he may have to give,* Eph. 4. 28. *Wee warned you, that if any would not work, he shoulde not eat,* 2 Thes. 3. 8.

(8) *These hands have ministered to my necessities, and those that were with me,* Acts 20. 31. *We laboured day and night, that we might not be chargeable unto any of you,* 1 Thes. 2. 9.

(9) *Excludatur etiam ab eisdem Anabaptistis insulta honoris & possessionum communis, quam tantu[m] regunt, ut nemini quicquam relinquant propter suum: In cuius mirabiliter lo. nuntur, cum suis prob. brevis divina f. responsum servant, &c.* Reform. Legum Ecclesiast. de Hixebus, cap. 14 pag. 14.

(10) *In his Sermon called, The righteous Mammon, not far from the Beginning.*

(11) *Vide Epiphanius 6. pag. 505. Augustin. c. co.*

(12) *Ang. 18 Epiph. 89. contra Pelag. & Manich. Q. 1. 4. 10. 1. 3. pag. 151. & Epiph. 106. contra Pelag. pag. 85.*

(13) *Nam Mor aquor, pelagius; non apud vel juxta signifiat.* Spelman Concl pag. 46.

So Pelagius in Latin gives and is given by Morgan in Welsh, or, as wee would call him, At Gwa: in English: which name is contracted and used frequently enough at our Sea Coasts.

(14) *Lib. de Novibus Eccles. cap. 35. 10. 1. pag. 331.*

(1) Let none of you suffer as a Thief, 1 Pet. 4. 15. Servants, no purloyners, Tis 2. 10.

(2) With a brother extor: i oner eat not, 1 Cor. 5. 11.

Nor thieves, nor covetous nor extortione s shall inheritance Gods Kingdome, 1 Cor. 6. 12.

(4) Blessed to give, rather then to receive, Ads. 20. 35. yea and that thing ye doe to all the Brethren throughout Macedonia, 1 Thes. 4. 10. If a Brother or a Sister be naked and destitute of daily food &c. and yee give them not those things are needs full for the body, what profit? James 2. 15. 16. & Vide 1 Corin. 9. 6.

(5) If here be any that provide not for his own, we rebuke you, 1 Tim. 5. 8.

## Of Civill Right.

(1) *Oras. 1. emera Julian.*(2) *In the life of Clem. 5. folo*43<sup>1</sup>.(3) *Th. Munzer**tryed as up Broneig**in Germany, Schl.**Comment. lib. 5.**in Princip.*

(4) By whom

they are also sti-

*aled Dreamers,*

(whose great pre-

reſon of quicker

reaſon then ordi-

nary is feare yet

half awake) that

defile the Fleſh,

(and yet pretend

the Spirit)

fleſhing not

only *Dominum*,but *Dominum*, the

civil Magiſtrate,

and the Magiſt-

racy, blaſphem-

ing Diցities,

and yet *Moses* did

not rale at the

*Devil*, ver. 8, 9.

so notoriously bad

that as a great Mountane that is onely viſible at a diſtance. *Enoch* the seventh from *Adam* could fore-fee, and did fore-fee of them then: οὐούσιοις, υεμέτηροις, καλα τας οὐούσιας δινθή στοχίουειοι. dicontented men, alwaies finding faule with their lot or portion, (be it what it will) walking after their own luſts, or greedy covetouſneſſe, and yet conſident, that will ſpeak any thing, &c. ver. 16.

Gregory (1) *Nazianzene*, of *Dulcinus* and *Margarita*: among the *Novatienses*, by (2) *Caranza*, and the *Familists* and (3) *Anabaptists*, all Sects, or names of hatred and averſation enough that they would down with all Fences, remove all Boundaries, unsettle the Land-marks, and restore all Incloſures again to their firſt and natural Community: which certainly they could nor can others ever do without bringing themſelvs within the compaſſe of thoſe ἀνόντας, ἀνόντας, ungoverned men, 1 Tim. 1. 9. ἀνάποδοις τη Ἑλλάδη, meerly croſs to lawfull power, Rom. 13. 2. κυριότητας ἡ αὐτοῦ, in (4) St. *Jude*'s phrase, that regard not Authority a riſh: yea, ἀνόντας, μαλακοὶς οὐ ὁρατάται, men out of their wits, as well as out of their duty, as St. *Paul* to *Titus*. That the corrupt, ſelf-loving, deceiptful, unjust world keeps it ſelf either ſafe, honest, or quiet, refers it ſelf chiefly to theſe binding, and to every man his own bounding laws and appropriations, and, by conſequent, to remove and tear them up, can be nothing else but to betray the world to miſery and unquietneſſe, and all the effects of, worse then Poverty, Defolation and Confuſion.

Thus are we advanced two ſteps, and 'tis hoped on firm ground: that partitions or proprieties are not of nature, yet (of much need, and by Religion) they may be: How? is the next enquiry; and this makes way to a third Proposition, ſeit. that

That

## C H A P. I I L

*Proposition 3.*

hat which boundeth and severeth humane Properties is humane Law: which, for the ending of Strife, preservation of Peace, maintenance of Societies, and bettering that we call Humane Good, the wisedom of man hath found out, and the wisedome of God in his Laws (whether divine or natural) does not disallow but confirm, for the bettering the condition of our humane frailty, and making our troublesome earthly life more quiet, calm, and comfortable amid all our infirmities and tempest-breeding corruptions. This is that Chymists fire that sets the several forms in compounded bodies on work to excite and raise themselvs up to cause division, and thereby separation, that the potential parts may come in single out of the heap, and that which might be distin<sup>t</sup>, may be. The fan that separates one thing from another, this from that, which were before in the common heap; the *Calamus mensura*, or mete-wand wherewith (1) *Ezekiel* was to measure and fit the several proportions of the Sanctuary; and wherewith are measured out unto us every ones propriety, and limited and proportioned: The square, rule, fence, measure that helps to cut out properties and divide them, parts the common, and encloses it, appoints of the whole how much every man must have, imprinting the Characters of *Meum* and *Tuum* upon the divided parcels, and circumferencing each with (2) *Noli me tangere*, meddle not with an-

que ab hac origine manavit omnium rerum proprietas seu dominium, quod si enatione, siue quacunque alia cessione in alios transfertur, siue posselli sic remittatur. Sed. Marc Clauſ lib. 1. cap. 5.

others,

(1) Chap. 40.  
(2) Ex domino ad medium  
jam dictum pri-  
vato introducio-  
venit, ut testis  
tori seue agri, cui  
jus ultius universis  
panter erat in a-  
rando, zedificando,  
arbores calendo,  
fructus percipi-  
endo, tranfundendo  
liber, proprietas  
ita possit esse, siue  
per distributionem,  
siue per occu-  
pationem, pri-  
vatim acquirere-  
tur, ut is liberum  
ejusmodi ultim  
iure posset impe-  
dire, nec eius  
injuria alii ut licet  
te uti posset. At-

## Of Civill Right.

others, touch not pitch least thou be defiled, lay not a greedy and unjust hand upon another, least it burn thy fingers. Would we have that which resembles *Dido's Thong*, whereby she parted that which was hers, from his she bought her little plat of ground of, calling This, City; That, Countrey? This is it. Would we behold that Sea-banck, that bounds the raging and impetuous Waves, speaking in the word as 'twere of an Almighty Creator, Hither shall you come, and no further; Here shall your proud Waves be stayed; That restrains, I mean, the raging, ravenous, impetuous, insatiable desires of mans greedy, restless, covetous minde, telling him, He shall have This, and no more, It is enough. He must and ought be therewith contented. The Law, the Law doth this alone, setting up every one his *Hercules Pillars*, how far he shall come and no farther; His bounds that he cannot passe, nor turn again to any of that community he has thus by his own Act excluded himself from, and may not re-invade though he never so much desire it. *Tolle Jura Imperatorum, & quis audet dicere, Mea est illa villa, aut Mens est ille Servus*, &c. as replied S. Augustine to some who asked him, what they had to do with Emperours? And a little after: *Per Juria Regum possidentur Possessions*, The Laws of Kings give us our Lands: (which was worth remembering, having been laid down at large before:) And so the Student to his Doctor: The Law of Man gives man what is his, and therefore may regulate, and therefore may make conditions, one of which is such as there resolveth the doubt in hand: And Mr Selden, speaking of Right, and Civil Right, and the particular Right of these Dues we call Tithes, makes their strength here immediately founded in humane law. page 14. of the Preface to his History.

And this is very reasonable: for the Law is supposed every ones Act; what is thereby impaled, Every one to have at hand in the enclosing thereof, even he that would claim Re-entry, but has hereby excluded himself from any such just hope of: For, (1) *Quod tangit omnes, ab omnibus debet approbari*, and supposed so done, that what is past in Law, is past by

by all, and therefore some endeavouring to give what Law is, have described it to be nothing else but (1) the agreeing voice of the Community. *Nil tam conveniens est naturali equitati* (saith the (2) Emperour,) quam voluntatem Domini volentis rem suam in alium transferre, ratam haberi: There is nothing more agreeable to natural equity, then that he that would have what is his transferred to another, his will be (upon signification) obeyed. If then I had any thing, and transfer it to another, or another his part-share in any thing, and transfer the whole unto me, nothing more equal then that he or I reap effectually the fruit of our own acts, and in vain shall either endeavour to reclaim, or blame any hard measure, if the thing so parted with, be held fast, and not resigned, without the explicite act of (3) his will, to whom it hath been sufficiently and fully intrusted; As when the Tenants shall release to the Lord their part of the common, (or to one of themselvs,) or nineteen co-parceners their whole parts to the twentieth. Forasmuch then as the Law is every ones Act, and what is thereby done, all have had a hand in doing; Nothing is more fit then that what is done by it, binde all, and be the parting thong, the bounding fence, the last Arbitrator above any appeale; Because, whatever restraints, limitations, admissions, exclusions have happened to be made by it, every man is supposed to have been at least the part-maker of, and so ought not to go against his own Act, nor attempt return to that himself has shut himself out from by his own consent, ex-presle or implicite.

And this, as it is a sufficient title, so 'tis the best: unhappy times, and worse the men, when the force of any storm shall drive men from this anchor of safety, to shelter in any other harbour their tottering propriety. Shall things remain in their common Mass undivided? Then much of the good will be lost. Or shall partitions be made out? I ask, by whom? If by me, partiality may blinde my eyes, or deprave my judgement

(1) Lex est commune Preceptum, viro-  
rum prouidentium consulum — Reipublica  
Sponsio communis, Brabant, de rerum Divisi-  
on cap. 3. & F. de Legibus, Senatusque!

Reipublica Sponsio, id est, interrogatione  
facta a consule, & communiter a populo facta  
responsio quod si placet sic statutum.  
Glossa, oratione. Omnes homines qui in  
Reipublica versantur, facile confitente legi-  
bus sua civitatis, as the notes upon the Glossa  
πόλεως ή Γαλβάνη κοινή, καὶ τὸ  
τὰῦτα περιέχει τὸ τοῖς εὐ τῷ πόλει.  
Marensib[us]. Nam & Demoflentis.

Lex vocabulum in contradicibus in toto  
Intre nostro accipitur pro Conventione, &  
dicit Zafius, &c. Kahl. Lex. Iust. ag. 516.

(2) Iustitia, de rerum divisione. Seld. 40.

(3) Ita sum  
est quod privatum  
possidet Dominus,  
ut alius  
eius injussio,  
omino iure esse  
nequeat. Seld.  
ubi supra.

*Of Civill Right.*

ment to carve too much for my self, too little for others. If I refer it to my neighbour, he may be guilty with me of the same infirmity. Shall both refer to some third good man? nothing is more miserable then to depend of anothers will, and to wait his Courtesie, especially for the things of life and necessity. I may starve, while he think me not in any want, and being an unexperienced Judge of another mans need, when I want meat give me Physick. The Law, the Law therefore is the fittest and onely equal certain Umpire between both, even before my self or any other; 'Tis an Oracle of Truth that never spake errour, the Rule of Right that can do no wrong; Others passions may wrong us, or our own vices, but Justice never. 'Tis a sign of the worst times, when any mans will or judgement shall be made the mete-wand of another mans estate and sufficiency, and I shall have that he onely thinks me fit to have. He may love to day, where he hates to morrow, and give his passions leave monstrously to act, and then where am I for light to walk by, when the variable Moon turns her dark side toward me? Besides, if we, attended with those covetous desires, which never, but as a shadow the Body, attend our frailties, shall come to divide out of the common heap; I may say, my Neighbour hath too much; He, with more confidence, my disproportion is in the excesse; A third, we Both, and then when our Judgements are thus divided, it will not be long ere our passions fight, armies are mustered, hot Pharsalian Fields pitched, and ere long spred with Carcasses, and hardly avoiding this when any arbitrary Interpositions shall hinder that to be the Rule of every ones Own (and enough) which alone should, the Law. That therefore and that alone is, I say, the onely fit equall arbiter and Judge of what each State, Man, or Condition shall have, the firmest bottom for Rights to settle on, the onely carver and distributioner that hath both given and settled several men in their several proprieties. Happy are the daies when her voice is heard in the streets, Bleffed the men that believe her Oracles: No work hath been done better of distribution or retribution, then what hath come through her fingers; no property is settled firmer, then what has her unmoveable

moveable Equity for a Basis to settle upon.

But now, forasmuch as she appeareth in divers forms, and the parts not onely different, but seeming cross one to another, whence would follow shee may, according to her several *Effata*, seem still to settle things divers waies. It may be therefore needful to consider her several *species*, or indeed not so much their contradiction, as subalternation, (whereout is likely to be hammered also some other Observations,) and to this purpose I say, (letting aside that of the Canon into *Ius, & Fas; Humanum, & Divinum*,) Humane Laws are either general or particular. The first whereof, as having the whole, or most of Mankinde consenting, doth therefore fitly obtain the proportionably spreading name, of the Law of Nations or universal; the other (like a by-law in a parish, made up in exception to the Law of the Kingdom) forasmuch as its made onely by some, and calculated for the Meridian of a particular place, is therefore as fitly stiled Local or Special. For Law it self is chiefly compact; a mutual consent among the Conveners, that such a thing shall be so or so: who happening to be either the Generality or some Few, the Community of All or a single Countrey, the Citizens of the world or the Citizens of such a city, Commensurate to the number of Conveners comes out a proportionably extensive Name, and of All or Some agreeing, we say, Law is either universal or particular, General or Special. Besides both which, there is also *Ius Naturale*, as a third branch, (or the law of Nature) usually so made: but because the reign hereof is also among brutes, perhaps among all Creatures, we reject it; first, as confining our selvs to humanity: Then, for that that we call the Law universal or of Nations is often confounded with it: for because Nature taught it all Nations, therefore it may be called from the Mistriis, as well as from the Subject, and so the Law of Nature is (as it commonly used too) another name of the Law of Nations.

These things thus premised, make way for a fourth Proposition, and as hitherto things have been represented,

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left, 1. In Community, yet, 2. Restrainable, 3. By Law; so that Law being manifold (the latter, I note by the way, over-ruling the former, not so much contradicting as excepting,) and it coming to passe, thereby that Right may be settled by it accordingly many waies: *sc.* In the world by the Law universal. In any place by the Law of that place. Hence my fourth Proposition: *scil.* that



That



## C H A P. IV.

## Propos. 4.



Hat which gives Legal or Natural Right universally in the world, is the Law of Nature, Nations, or universal.

I call them so promiscuously, for the reason before: and think they have power to give this propriety from another reason assigned a little before that, for that all seem to have passed their consent to the making of them. Nothing is more reasonable, (as was said) then that every man should be bound up by his own act: Forasmuch then as men seem to have agreed in the Law universal, and they have passed their consents to some such general Axiomes (*Generalia pacta Societatis humanae*), as these; as that, What I have is Mine, unlesse there be better title; What I finde is Mine, Chance endowed me therewith; what does *accrescere* to my Field, is Mine by accretion, and the like; If a thing be by any of these waies transferred unto me, I have, no doubt, in the world a good title to it, and may account it justly Mine hereby, without any farther doubt or question. Whiles it was others, it was in their own power, but now (to allude to S. Peters killing Argument) sith they have parted and settled it with consent thus upon me, why should they go against their own act, and not but voluntarily leave unto me, what the Law, every ones Agreement, hath cast upon me? This is by some called the Law of Reason, because 'tis the work of Reason, the result of Reasoning, and that general Agreement in all mens breasts that runs through the world, hath stamped it for allowable, current and authoritative: what I have by it, I have then by all

all mens allowance, and so Consent the life of the Law, and foundation of dominion cannot but have settled me a sufficient title and undefeasible.

*Quoniam autem lex  
Civilis aliud con-  
stituit, eam ob-  
servari debere  
jus ipsum natura-  
lē dicitur. Lex enim  
civilis quanquam  
nihil potest pre-  
cipere quod jus  
naturae prohibet,  
aut prohibere  
quod prescipit,  
potest tamen li-  
bertatem natura-  
lem circumscri-  
bere, & vetare  
quod naturaliter  
liberetur, atque etiam  
ipsum dominium  
naturaliter acqui-  
rendum visua-  
antervertere.*  
*Graz de Inse-  
Belli pag. 132.*

Thus it obtains generally, but in some particular States or places it may not be so : A by-law over-rules the Common (not by crossing, but excepting, as was said before) as in fining of Commons, imposing penalties, &c. And so a particular State or Kingdom may lay restraint where the general hath left at large, leaving the Gate of Liberty open, where the people of the world have shut it, or shutting, yea locking it up fast where they have left it open. This makes it needfull for me to consider where I live, and whether any particular exception of the Place suspend not here the general Rule of Right and Righteousness ? As if it do, what is Just in it self, is not now Just ; That which should be mine abroad in the world, here is not mine. Whence ariseth a fifth Observation : That though 1. Nothing by Nature be mine, yet 2. somewhat may, which 3. the Law gives, 4. in the world the Law general : yet

In

## C H A P . V.

*Propos. 5.*

**I**N any particular place, that which gives me full right and true property to any thing, in that place is *Lex Terrae*, or the Law of that Place; either 1. confirming the general (which had put me in possession before) positively laying down, or negatively saying nothing; or 2. limiting, or excepting by some special title to me, and saying that in some new way there I shall have this or that settled upon me. Which be it how or what it will, and the local decision settle to my gain or loss from the general, yet am I to content me therewith, as being now there no longer a Citizen of the world, but a Citizen of that place, and must be satisfied to have the Right of my Right altered, disposed and transposed according to them and their prevailing topical constitutions and considerations. Most men love not onely variety but singularity, to have things go their own way, and it often pleases how much it is the more singular: If I light upon any such disposition in my self, cross to what I there finde, and it be much to my prejudice that Common Right prevale not, as I would, I must not quarrel with my Stars, or wage war with a Multitude, setting the whole hive in combustion because they will not make honey my (seeming best) way; but meekly and quietly rather yeeld to be carried along in the passengers boat, then strive to draw all out of the way, to go my new way, though the better, tractably conforming my self to the orders of the Corporation I finde, rather then making a rent in the Body by seditious disturbances, and (so the things be not dishonest nor impious) make that rule in the Poet a Law to me,

*Cum fueris Romæ Romano vivito more.*

In:

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In short, this is sure, nothing is Mine justly in any place, but by the approbation and authorization of the place, whose onely Law seals me a sure title, and without it I am nothing in whatsoever I possess but a crooked Usurper. While the world lasts, men will both love and go several waies; and though they keep, or are willing to be kept in by most of the general Rules seem agreed on by mankinde, yet in some particulars, for clime, site, neighbourhood, religion, or if it be but for varieties sake they will vary: Here for me to plead the geneneral Rule (of Right or Equity) were to act indeed a good part, but on a wrong stage, and in truth to be a quarrelling, offensive, hurtful member which must be removed, and as a noisom humor purged out, unless I master and conquer mine own unreasonableness. The Law of the Place is that therefore I must conform to in the place where I am, and in that Charter finde the title of my whole Inheritance, or else it is truely and justly none of Mine.

But I am yet but as it were beyond sea, or nowhere. All this is nothing (immediately) to what is here, and what with us individually is chiefly to be regarded.

This brings me to my last Proposition, not so much distinct from that next before, as subordinate to it, or grafted upon it, and settling the truth thereof to the Clime and Meridian where we live, (for which all the rest was intended, and prepared,) and it is This, That

Here



## C H A P . V L

*Proposition 6.*

Here in England, that which gives me right or title to any thing, is *Lex hujus Terra*, or Our Law. This is the Basis of all English property, and grand Charter by which every man holds his estate with us : The Fortune-teller, yea , the Fortune-giver, and Maker, and Creatour of all Right and Title among us, which lets in first light of possibility of fraud , injustice , or any wrong , and that alone gives place to the 8<sup>th</sup> Commandement, ever to take any place , *Thou shalt not steal* ; for, *Where is no Law, is no transgression* : if we had no right, we could have no wrong ; and in bare taking how could I be accused to steal that which is no mans, but is now by law indeed anothers?

By Law here I understand that which under sundry heads has been of such force with us : As the Law of Scripture first, which is not here a Law onely, but a Law of Laws ; whatsoever is here done against it, is *avouia*, as against the Law of the Land : and farther, if any Law be made against it, that Law is a grievance and an offence , and thereby both unlawful to obey it, and the order it self null , as more then revocable revoked, as if it were made against the great Charter. ( Upon which ground also *Dimes* are here due, saies (1) a very good Lawyer.

Then have we the Law of (2) Reason, or Nature , or Nations , taken in likewise into our Code or Canon , so that whatsoever is done against the same (generally received) is against Our Law , as was said of the imbraced Scriptures

*Dial. & Sind.*  
*Dial. 1. cap. 6.*

(1) *Ibid. fol. 22.*

(2) *Rep. 7. Calo  
vina Cap.  
Doff. & Sind.*  
*Dial. 1. cap. 5.*

## Of Civill Right.

(1) Because it is written in the heart, it is never changeable by no diversity of Time or Place, and therefore against the law, Prescription, Statute or Custom may not prevail; and if any be brought against it, they be not Prescriptions, Statutes, nor Customs, but things void and against Justice. id cap. 2 fol. 4. in a crooked R. le, made by a freight, to make right lines by.

*As in the Empire: Omnes cuiuscumque majoris vel minoris administrationis universitatem nostram Reipublicam Iudices monemus; ut nullum rescipimus, nullam pragmatiam Sanctionem, nullam sacram Annotationem, quae generali Iuri, vel utilitati publicae adversa esse videatur, in interpretationem cuiuslibet litigii patiarum proferri: sed generales facias constitutiones modis omnibus non dubitare oblevandas. Dar. Kal. Iul. Constantinopol. So the Emperour Anastasius. Cod. Ibk. . tit. 22. l. ult.*

(2) General: whereof the Students to the Doctor, Dial. 1. cap. 7. is the third ground of the Law of England: or particular, whereof cap. 10. & 16. Bract. lib. 1. Sect. 2.

(3) Whereof the Body given by Bracton, Flota, &c from times before.

(4) Vide Doct. & Stud. Dial. 1. cap. 11.

(5) Cook Instit. 1. fol. 11. b.

(6) Cook ibid & Instit. 4. cap. 22. pag. 134. &c. of the Court of Admiralty proceeding according to the Civil Law.

(7) Atqui interea, è locis superioribus ex Iure Cesareo ab Iurisconsultis Nostris, Flota aperte auctore, Bractone, Thomasonio celeberrimis ac Iudicis cum primariis (quantum ad posteriores binos attinet) Praefectis, ita alatissimae expressione indicatis, atque in rerum quas tractatione probacione & argumenta sic exhibitis, idque velut auctoritatem aut saltem rationem cogentem pte se serenissibus, manifestum fit, Vtum qualcumque ne que cum adeo obsecratur, apud Majores nostros eo in seculo juris ejusdem, aq; illius librorum in discussionibus nostris etiam ex jure Anglicano definiendum innullus. *Nos wth intent to submit this the Kingsome to Caesar or his Laws, or relinquish our own, — sed ut, tum ubi dcesset nostri Iuris præceptum expressius ad rationem etiam Iuris Cesarei ratione suffulsum recurretur, tum ubi Ius utrumque consonum, etiam Cesarei quasi firmaretur, explicare uice res verbis. Seld. ad Flot. diff. cap. 3. Seld. pag. 47. 2.*

(8) Cook on Littleton, Seld. 648 fol. 344. & of the Jurisdiction of Courts, cap. 7 & p. 321.

Doller & Student, Dial. 1. cap. 6 fol. 11.

Attic. Cleri. 9 Edw. 1.

Circumscript. aga. 15. 13. Edw. 1.

Stat. of 24. Hen. 8. 12.

& Th. Smith de Repub. Anglicana lib. 3 cap. 11.

by he reached out his helping power, and exercised some part of his Ecclesiastical Jurisdiction to some persons, and in those Cases it concerned him to have both ended, and thus ended, and accordingly was.

All these are so many Oracles of Justice, Pillars of Right, Distributioners

to us Christians; and (1) this likewise, as that, a Rule of Laws. Also that law of Reason, spun out into certain, as it were derivative branches, which are so many sorts of that wee call positive Law; as,

(2) Law Customary,

(3) Law Common.

(4) Law Statute.

(5) Law Maritime, or that of Oleron, published by our Rich. 1. there, but of English mint, though there cast and named; the English Sea Law it is made at Oleron: The (6) Civil Law also, as in our Courts of Admiralty, and Marshalsey, and generally supplying (7) the defects, and eeking out the imperfections thereof by its larger spread body, extensing thereby to many particular either determinations or reservations, helpful where the brevity of our shorter Rules and Maximes of Prudence could not reach.

Lastly, the several pieces of allowed (8) Canon, fitly called the Kings Ecclesiastical Laws: which though ministred by Church-men, is, or was, one of the Kings arms of Justice, where-

Dif-  
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Distributioners of property, and Umpires of strife, authorized sufficiently so to do, and to give me any thing that they do give me, and what is so done or given is lawfully ; and if any thing be so settled upon me it is questionless (1) mine. And as by these, so generally by writing, or custome, by statute, or canon , whatsoever in the true judgment of Courts, and common reception of those that are not mistaken, is Law ; That is the same pillar of property, assertour of Rights , foundation of dominion, strength of title, and giver, maintainer, preserver, defender, assurer, and protector of a man in that he so has : as an oracle it tells him truly what is his, as more then a Prince he gives it him , and makes it wrong, injury, fraud, theft, usurpation, injustice, (and these things only possible this way ) if it be taken away from him.

And for this purpose all these are equally and alike sufficiently operative. There is no choice ; for where all are the same , and have the like cause of power, one must needs be as good as another.

All our law is in some sort, (derivative, mediately, at second hand) the voice of God approving all just pactions, and humane positive lawes , and so his stamp is upon every part; and he that resisteth, in any, resisteth the Ordinance of God. Neither have we any other : These are the alone limitations, banks, and boundaries , that hedge in, and hedge out, giving certain admeasurement, as the law-word is in some case, of properties, to so very many as there be among us, making us know our home, and giving our home, which none but they can do in this various world. For the Divine Law immediatly is of no force ; the severing by Tribes, or cutting by *Jephunah's* thread served but once, unles for example, (and so I beleeve much use hath been made of it here, more then we are aware of or do readily understand, our (2) Shires, Hundreds, Tithings, &c.

*nominavit : Centuriam hundredum : & Decuriam Teohung , five Tienman-tale , id est, Decemvirale Collegium u appellauit, atq; cūlē. nominibus vel hodie vocantur. Hence our Tythesmen, &c.*  
*And a little after : Decrexit tum poter Aluredus libertate in conditionis quibus in Centuriis scriberetur aliquam, utq; in Decemvirale aliquod conj ceteretur Collegium : De minoribus ne quis Decuriones ut judecet, ac si qua res esset difficultior, ad Centuriam deferent: (like the steps of Appeal, Exod 18.21, Deut. 1.6 17.) Difficillimus deniq; & maximi momenti lites Senator & prepositus, in frequenti illo ex omnib; Satrapia convenit co nponerent. Glos. ad La. bard. Aretion. pag. 217, in vocab. Centuria. A proved by Dr. Coviili in his Interpreter, in vocab. hundred. And compare /arbitr. Israh. Antig. 1.3. c. 3. and 2 Corin. 25. 5. Some glimpse hereof appeared in the publication of Sir H. Spelman's late larger work of Tythes, pag. 41.*

(1) *And offiſch a Law of Man, that is conforſt to the Law of God, is ſe  
appeareth who bath Right to land and goods, and who not: for whatev'er a man bath by ſch. and of man, he bath righteouſly; And whatev'er u had againſt ſch law, is unrighteouſly bad. Dr. & Stud. Dial. cod. cap. 4. fol. 8.*

*In every Law, ſo-  
tive will make u  
ſomething of the  
Law of Reasons,  
and of the Law of  
God. Id. fol. 7.*

(2) *Aluredus Rex  
(who at all graue  
made a r political  
division) ubi cum  
Guthruno Daco  
ſecularis inerat,  
prudentissimum  
illud olim à Ic-  
tronie Moysi datu  
ſecutus confilia-  
um, Angliam  
primus in Sar-  
pias, Centuriis &  
Decurias partiis  
est. Sacrapiam  
Scype, à  
Sceypian,  
quod parti  
significat,*

(1) As in the Ottoman Empire where the *Tinias* are such the same with our military Benefices, obliging Estates for life, upon death the State disposes, as of our Ecclesiastical Benefices; that failing nor by inheritance, there may be still choice of fitting men, *vide Knoll. Turk. Hist.* in his Appendix of the Turkishkingdom fol Aaaaa : and that learned and judicious observer, *sir Henry Blount* has also the same, who was lately among them, p. 61, 66 and before them Mr Selden in his Titles of Honor, part. 2. c. 1. 2. So 'tis also in the Great Mogols State lately created and supported by them: *vide Pursh Pilgrim l. 5. Appendix. ad e. 6. p. 543. 544 545. Edss. 1614.*

*And Scanderbeg used the same policy also in Epirus.* Now all this might have been well enough here, or the same thing hath continued, and is yet well enough in the Ecclesiastical State, nor wrong thought by the ruling Constitution, if when the man dye, the widow and children are presently strangers: Nay, even in some nearer parts of Christendom as to secular succession too: for the Gloss on the Feudal Law, speaking of the old way for life only: *Et hoc adhuc obtinet secundum regnum confitendum in se do Marchia, Ducatus, Comitatus, vel alterius regali dignitatis ab Imperatore date, quoniam illud feodium finitur eum persona accipiens; quia haec res in eum non successat, nisi ab Imperatore investitur, Gloss. ad uitata, ad feud. l. 1. tit. 1. sect. 1. And utrum, it is so in the Text.* De Marchia vel Ducatu, vel Comitatu, vel alia regali dignitate si quis investitus fuerit per beneficium ab Imperatore, illi tantum debet habere, heres enim non succedit illo modo, nisi ab Imperatore per investituram acquisierit: *ibid. ad. sit. 34.* Though perhaps it be not strictly executed: But this, it seems, the Law.

Coming I verily beleeve at first from the pattern of *Judah, Levi, Simeon and Benjamin*, by exemplification: ) If any man should attempt it, he might be partial; if none, the thing not done: so that supposing a partition needful, and some to doe it, and no revelation from heaven, (save in paternor general rules,) we can lay hold of no other umpire or Judge like to be fit to do it, then that voice of wisedome (implying all mens consents) which is in the Law; the gracious goodnes of God assisting the grave wisdom of man, yea, enabling and authorising it to set bounds hereby to our appetites, & master our unreasonable, proud, headstrong desires; giving lust a law, covetousness a law, the hand a law, nay, the eye a law, that it may not so much hereafter as greedily covet what is anothers. This is that which bindes the Bear and shackles the wolf, lays fetters upon our wilde and Forrest desires, that else would make us very apt to hearken to temptation to be preying one upon another. But this restraines our fury, and locks up the Lion in the grate, bidding, yea forcing all to goe home and be content with their own; *Sorte tua contentus abi;* and cast not a fruitless, sinful, greedy glance upon the inclosure of thy neighbour.

To give instance in some particulars: From this law thus received amongst us it is, that I am to succeed in my fathers fee: I have right to succeed, I may claim my right; and I have wrong if I be kept out of my due & lawful inheritance. For our Law hath divided much land into such tenures, (upon reasons of profound wisdom not discernable to every common apprehension,) that hath willed I should succeed my father, if his heir; I am his heir, nay, though a daughter, and therefore I must and ought to succeed.

It is not so in (1) other States, nor was it in ours if it be right

right feodal, where the fee was either for (2) life, so long as the known Miles lived, or for his son after him, (excluding his daughter,) though since the daughter was admitted because she might marry a Souldier, and so both she and the son new admitted: It was not so (and the law just while it was) but a military Benifice, as to succession, as an Ecclesiastical.

(2) Or not so long, but *dum bene regessit*, & first, as an ecclesiastical man keeps his Bene-

fice, or as Tenants at the will of the Lord, to be cuted upon distaste, as a stipendiary servant from his ten pounds a year. For the Fee was noching but so much land given for obseruance: To suppose outrage, maintain the Lords title, and help keep the rest in awe. Take the best authority, *Anasquissum enim tempore sic erat in dominorum potestate communis, ut q[ui]c[um]que volunt, possent auctoritate in feudum a se darent*, (retained to this day in Castleguard, saith the Glosse, as a Generall discharges a Captain at pleasure), *postea vero ad ventum est, ut per annum tantum firmasatem habere*: *deinde baronum est ut usque ad ultimam Eisdem producentur*: (so an involved condition of Loyalty.) *sed cum haec iure successione ad filios non pertinet, sic progressus est, ut ad filios deveneret*: *in quem ita dominus hoc velles beneficium conferre*; (so now to a man and his son, no more;) *und hodie ista stabilitum est ut ad unius et alterius filios pertineat*: (not, as in Gavelkinde, divisible, which was unusall in Fees: as Sir Henry Spelman in Glosse, p. 237, but to one and all successively, (or so many lives he had, the father and all his sons, that All might succeed in All;) for before onely one was taken in, *ad quem, &c.*) Afterward (about the year 1035) the favour was enlarged: *a. Cum vero Corradus Romanus proficeretur, petitus est fidelibus, quia in eius erant servitio, ut lego ab eo premulgata esse etiam ad nepotes ex filio producere dignaretur*: (Now Grand children taken in; understand immediately to succeed their Grandfather, their Father dead;) *& ut frater fratris sine legitimo herede defundatur, vel filius in beneficio quod eius patris post sucessos*: (now to his father immediately, to here in a second sucession a third possession secured, to a man, his son, and that sons Brother; or to a man, his son, and that sonnes son: But this held not unless the first Donee were in the line ascendant;) *Sin autem unus ex fratris & domino feudum accepterit, os defuncto sine legitimo herede, frater ejus in feudum non succedit*; and so goes on to regulate and limirother renover, or collaterall successions, ending at last in, *In maiori defundentibus hucus non jure usque in infinitum extenditur*. Gerardus Niger. Feud. lib. 1. tit. 1. By these de- greeing things, crept up. Sir. Thomas Ridley acknowledgeth two sorts of Feuds, Temporall, and Perpetuall: View of the Laws, par. 1. chap. 4. sect. 2.

(3) For the Lombards, from whom the Feuds first came, or at the least were chiefly derived from them, directing all their policy, as the Lacedemonians did, to matters of warre, had no feminine Feuds, among them; But after by proesse of time, there were created as well feminine Feuds, as masculine, &c. So goes on Sir Thomas Ridley in the same Section. And the reason is given more explicite by P. Rob ff. *Dum formina non possit in se defendere dominum in Bello, vel alia fortis fuerit vir: ergo nec feudum habebit, cum destruxit servitum*: (though by custome it be in France otherwife:) Feud. Deel. p. 3. Septim. 6.

The bottom of it is that of the Ruling Law: *Hoc autem notandum est, quod licet filii ut Masculi patribus succedant, legibus tamen à successione feudi renoventur: similiter & earum filii, nisi specialiter dictum fuerit ut ad eas pertinet*, Gerardus Niger lib. 1. tit. 1. sec. 3.

And so twas in the Salike law: wherein *inter ceteros spectabilissimus est iste paragrapthus: In terram Salicam Mulieres non succedant*: or as others more fully; *de terra vero Salica nulla portio hereditatis mulieri reniat: sed ad varium sexum tota terra hereditas pertinet*: spud D. Spelman. Glosse, pag. 442. in vocab. Lex Salica. The meaning whereof has been expostulated at the cost of Armies of men, and Millions of treasure between us and F R A N C E: a few lines are not fit to interpose for umpirage, after so many and horrible contestations.

Again it is somewhat special here, that if I have a wife, and she be an inheritrix, and I have a child by her whose life is discernable by crying, that (1) child shall give me the land, (otherwise a stranger) for term of my life, and it is *per legem Angliae*, or *per curialitatem Angliae*, by the law or curtesie of this place, (favouring no doubt marriage and fruitfulness) which if it were elsewhere and common, what means (2) faith *Littleton*, the appropriating title, that this is done by that favour hath denomination from England? And in some places the husband shall have (3) half the wifes inheritance with us, he superviveing, though he have no issue, this also giving a right by the place which is not elsewhere,

(1) *Lex quidem Anglie est, ut si quis uxorem hereditatem habentem duxerit, vel aliam terram habuerit in feodatione maritagi vel alia causa donationis, quod feodium habeat & liberum tene- mentum, si libe- ros inter se ha- buerint ex iustis noctis procreatos; si ipsa præmoriatur, remanebit viro terra mulieris tota vita ipsius viri, five superstites fuerint liberi five mortui, dum tamen sonum emiserint aut clamorem, qui audiatur inter quatuor paries, si hoc probetur.*

*Flet. lib. 6. cap. ult. fol. 4. But this is only of the first Husband.*

*Vid. Bratton de Except. cap. 30. fol. 7.*

*Littleton. lib. 1. cap. 4. fol. 35.*

*Dr. & Stud. Dial. 1. cap. 7. fol. 14.*

(2) *Et est appellante per le Curtesie d'Engleterre, par ceo que ceo est use en nul autre Realme fors que tant sollement en Engleterre.* *Littleton. lib. 1. cap. 4. fol. 35.*

(3) *Dr. & Stud. Dial. 1. cap. 10. fol. 21.*

(4) *Rationabilis autem Des est cuiuslibet mulie- ris de quoconque tenemento tercia pars omnium terrarum & tene- mentorum, que viri suos tenuerit in dominio suo, & ita in feodo quod eam inde dotare poterat die quo eam desponsavit.* *Bratton. lib. 2. cap. 39. fol. 2.*  
*fol. 92.*

Further the widow relict here shall have the (4) third part of those lands had been her husbands ordinarily, and by the custome in some County (5) half, and in some Town or Burrough the whole for life: It is not so in (6) other places, and yet their wives are women. And this with that assurance that the law allows her a known (7) writ to recourt by, and *de jure dotism*, is a head enlarging into much of our law, whereof others have little. This I take it, is in special favour of women here, and this the best reason I have met with: and while it is so, there is as much right in this (the like not elsewhere appearing) as there is here for any thing in this Kingdom.

*Vid. Flet. lib. 5.*

*cap. 33. fol. 11 pag. 341.*

*Glanvill. lib. 6. cap. 1. & cap. 17.*

*Littleton. lib. 1. cap. 5.*

*Mag. Chars. 6.7. &*

*Chart. R. Ioan. apud Mass. Paris.*

*ad ann. 1315. pag. 247.*

*(5) Dr. & Stud. Dial. 1. cap. 10. fol. 21.*

*Littleton. lib. 1. fol. 37.*

*(6) Romanis non in usu fuit uxoris dores retribuere: ideo verbo genuino carent quo hoc dignoscitur:*

*& rem ipsam in Germanorum motibus miratur Tacitus, &c.*

*Spat. Glouc. in vocab. Doctrinum p. 216. col. 3.*

*(7) Nas. Breu. fol. 6.*

*Brat. de actions dist. 1. fol. 2.*

*Flet. lib. 5. cap. 25.*

*Glanvill. lib. 6. cap. 5.*

Escheats

Escheates also, and strayes, Fines, and Herriots (against which some keep now a grumbling that are worthy onely their own low thoughts, as if all were too deep their shallow capacities cannot reach, and justice folly because fools understand not wisdom) the Landlords relieve, the Church-mans mortuary, a quitrent, a days work, Eschuge, (1) foldage, (2) Chevage, (3) Chiminage, I doubt not all these are as due to those can claim then by law, as mony lent, the publike tribute, the landlors half year, or any thing is out of ones own possession; though whither other states have the like I know not, or what is equivalent to them, we are to walk by our own rules not by theirs, and that which here with us gives right, is enough though in other places it do not. We may say as well as the Empire, why not? having equal power within our selves to chuse our own rules, (changing but a few necessary names:) *Jus Quiritum est propriè Romanorum, quod nulli tenent nisi Quirites id est Romani. In quo agitur de legitimis hereditatibus, de crationibus, de tutelis, de usucaptionibus, que iuxta apud nullum alium populum reperiuntur, sed propria sunt Romanorum, et in eosdem solos constituta.* Dist. I. cap. 12.

Signum subjectionis & dominii de capite suo: Et quandiu Chevagium solverint servi, dicuntur esse sub potestate dominorum, nec solvit dominica potestas. *Braß. lib. 1. cap. 10. sect. 3.*

Fugiti vi esce incipiunt nisi Chevagium annum Domino suo solvere in signum servitutis. *Flet. lib. 1 cap. 7. Sect. 7.*

(3) A tribute that Woodmangers and others, paid to the Feu-farmers of the forest toward shwayes. They were called Chemini, from the french word Chemin, for a way. Volumus & statuimus etiam quod decima de lanis obtineamus crecant, five in magnis pratis five in parvis, five in Cheminis exigantur. *Lyndwood Confess. Provinc. cap. 1.* Quoniam propter. Et, pax quatuor Chiminorum: — & Chimini minores de Civitate in Civitatem, leg. *Edwards Confess. cap. 12.* It was four pence a year for a Cart, and a penny for a horse: due and so levied by Chart. Forest. cap. 14. in Pultons abridg. pa. 8. & vid. Matth. Parf. Hist. in Charta. R. Iohan. p. 250.

I might farther instance in some other, (proper rules of right for our clime) but I fear the porch too big, (which yet if it be, may serve for other uses then to be onely here an introduction;) wherefore but to point.

(1) *Faldagium est privilegium erigendi & circumagendi falda seu ovulis per certam eam, eorum extensi nem, eorum sterco, rando gratia, & gregis forendi.* *Spat. am. Glos. in voc. Fald. p. 248.*  
*It seems a privilege the Lord had to pen upon his land all the sheep fed in his Manner.*

(2) *A kind of tribute paid to the Lord as head or chief, in token of acknowledgment of him.*

*Chevagium dictum recognitio in*

(1) De divisione  
rerum l. riparum.

Init. 2. tit. 1.

sc̄t. 4.

Braſton lib. 2.

ca. 1. 2. sc̄t. 6.

(2) Sed publica

hæc q. x. corius

populi al quando

fuerunt, jure no-

stro ad regem

tranferuntur:

quippe qui universi populi atq; adeo ipsius Reipublicæ personam sustinet. Qui itaque in ripas fluminis  
publicorum naves hodie exonerant, vestigia Regi, aut jus ejus habentibus solvuntur. Et in flumine poh-  
lico nemo pescatur, quia Regie hanc libertatem non obtinuit. *Cœn. Inst. Iur. Anglie. lib. 2. tit. 1. fol. 4.*  
*vide Braſton. lib. 2. cap. 1. sc̄t. 2.*

(3) *Inst. 2. tit. 1. sc̄t. 47.*

(4) Cowell ib. sc̄t. 7. *Braſton de Corona cap. 3. sc̄t. 4. fol. 120.* *Fleta lib. 2. c. 43 sc̄t. 2 pa. 61.*

(5) Acquiritur dominium per inventionem, ut si Thesaurus inventetur, *Braſton. lib. 2. cap. 3. sc̄t. 3. fol. 1.* *Id. de Coron. cap. 3. sc̄t. 4. fol. 120.* *Fleta. ubi supra.*

(1) Quod enim  
nullius est id  
ratione naturali  
occupanti conce-  
ditur, *E. de acquisi-  
tione dom. l. 3.*

(2) Braſton lib. 2.

cap. 2. sc̄t. 2. &c.

cap. 24. sc̄t. 1.

Fleta lib. 3.

cap. 2. sc̄t. 1.

Cowell *Institut.*

loco citat. sc̄t. 12. De feras, piscibus, avibus illud notandum est: Qui imperium habet in terras &  
aqua ejus lege impediſſi posse aliquos, ne feras, pilces, aves capere, & capiendo acquirere eis licet;  
atque hac lege etiam teneri exteris. Ratio est, &c. Nec obstat quod sepe in iure Romano legitimus, ju-  
natur aut genix liberum etefatia animalia venari: hoc enim verum est quamdiu nulla lex civilis inter-  
cedit; sicut lex Romana res multas velinqebarat in illo primeyo statu, de quibus alia gentes aliud con-  
stituerunt. Cum autem lex civilis aliud constituit, eam obliuari debere jus ipsum naturæ dictat:  
*Grot. de Juri Bell. 2. a. sc̄t. 5.*

That was no ones, the (1) Takers, (as fish, foul, wilde  
beasts, &c,) but with us again (2) the Kings; and so gene-  
rally we are ruled by our selves: Our own law is the measure  
of our own right; we have that, and that alone, but that  
firm, and it is injury, and that injury alone to dispossess us of,  
that our own nationall, home-binding Laws have settled as  
they have; That, is Here nothing else, right or wrong.

Some seem to go farther, in requiring to property in the  
Common-wealthe a right in Religion; to have a right in  
Christ or none in the Creature, for whose sakes is that  
question cut out: *An dominium temporale fundetur in gratia?* or as others, *An gratia sit fundamentum dominii temporalis?* but(besides that, the discussion hereof moves properly in another sphere,) I beleieve if they be understood aright, their  
desires may not be altogether irregular: for of that Civill  
Right we speak of, they require and seem to have enough in  
civill

Civill determinations. To purifie so the conscience in the sight of God , they may say perhaps we must have more ; our nature amended , by Christ sanctified , and by application of him himself owned , and so only to the Pure are all things Thus pure : But to peace and order and right among men, here the determinations of the lower scene are enough ; and he breaks humane laws that couzens or steals what is but so settled by them ; and by consequent Gods, because Mans.

It were hard to say, that, as on the one side a sanctified man should finde no more sweet in Gods blessings of the same kinde then a heathen or a publican ; so on the other, that any should be so vain to think that a wicked man is thereby an out-law, having no faster seat in his possessions, then that a godly neighbor may turn him out of doors to morrow , and by vertue of his share in Christ (the heir of all things) create himself a principality in present of all the wicked mens wealth in the world. The Indian is sure master of his own gold and spices ; the King of Spain of his Indies ; and a Jew or Turk of their severall Owns ; nor can the most deboist Russian amongst us (worse in some regard then *Turk*, *Spaniard*, or *Indian*) but be so true and rightfull a Master of his own wealth, that his most hellish wickedness cannot turn him out of it in this world, (unless his prodigality do) that he should be henceforth a thief of his own wine or cates, or so meer an usurper that any of Gods servants may usurp from him indeed, and rob him as the Israelites did the Egyptians in equity and conscience. Far be this from every one has truly learned Christ so to think or do. 'Tis fit every swine have his own sty, every dog be let alone in own kennell : The grace of Christ teaches us to use our own , not censure others ; to be thankfull for what we have, not covet what is other mens. There were that it hath been laid to their charge they have endeavoured to subvert those laws , to bring in the Civill, and do some such things as *Stephen* was accused to say Jesus of *Nazareth* meant, *To change the Ordinances that Moses gave them*, *Acts 6. 14. & vid. Cap. 21. 21.* So these , what *K. Alured*, *St Edward*, *King Edward*, *Henry*, *Elizabeth*,

## Of Civill Rights.

James, and other Law-founders have with much bountie wisdome distributed out unto us: But if, this would ha been such a transcendent attempt both of folly and tyram that it would have ushered in more injury then ever the Conqueror could, who changed the Governor, but could not the Laws, kept and was forced to keep that body intire, on he set himself a new head at top, and would have rendered them questionless guilty of that *Crimen lae Majestatis*, highest offence, whereof *Glanvill* speaks in the very beginning of his Book, *De nece vel seditione domini Regis vel Regi* leaving little else for a foraign Enemy to do, sith the taking off these would consequentially have taken away all things. For pretend they to amend hereby what they would, bring in the twelve Tables, the politall part of the wise *Alo ran*, the Partidaes of *Spain*, Arrests of *France*, or whole voluminous bulk of *Justinian* and *Accursius*, there could have followed nothing else with us but unsetledness of mens estates, (which are the gift of our Law alone, and by that alone guarded and preserved) disorder, ignorance, multiplicity, uncertainty, and to those that had any thing the worst undoing even by law, and that this should settle them besides their own, all they are now owners of: For no instruments must have a new work, a new-fashioned rule draw a new-formed line, a new Law have a new Righteousnesse and so our Fees, Socages, Burgages, Claims, Entries, &c. would all have been put out of their old course, into another that new, and perhaps not consistent with our Government perhaps, not with our selves; and in a word, a New right and what were then become of the old, and All, as many had any thing by it? Some would have stuck to this; others to that; another parcell to neither; a fourth (only to the right) that we had and is best because fittest, and used, loath to stay in *Babylon* when they saw hopes of *Sion*, while in the mean time all vary, and *Sion* is made no better then *Babylon*. No whole part can tell whither to take, and unity being gone, thereby a new sad way paved in division, to war, poverty, ruine, desolation, and by Anarchy extreme disorder and vexation. Let them bear their rebuke whosoever they be

that

that should have attempted things so monstrously exorbitant, and full of sin as well as injustice; All tis like would have been hereby at stake, if not All lost: for our Law gives and preserves us All, and the taking away this, or changing, must needs then have taken away or indangered All: According to what a Lord Chief Justice said not long since, The Law is the most common birth-right that the Subject hath for the safeguard and defence not only of Goods, Lands, and Revenue, but of Wife and Children, body, fame, and life, *Cook Instit.* 1. and *Braston before, Justitia dat unicuique quod suum est, lib.* 1. cap. 4. All is the bequest of Justice, and the parent and guide thereof is the Law.

And thus my Porch or preparatory Preface seems well nigh finished, raised upon six Pillars, as I take it, of firmnesse enough, touching the nature, ground, rise, growth, strength, and perfection of ours and all Civill Rights. There may have been some mistake in tempering the morter, disordering the materials, or blemishing the whole by unskilfull handling, but the truths howsoever seem solid, and their use enoughe, chiefly in this, relating (for which they were given) to all follows, That, if this be the nature of Civill Right, and All mens best, and tythes have This, in any ones disturbing them, he must needs disturb what hath the common foundation, in with-holding them he with-holds what is due by as good Right, as any man claimes any thing by, he undermines that which is the stay and support of his own house or wealth, and does what if the like should be done to him, would leave him Nothing, because He destroys that preserves and gives to him and All others Every thing. If we all rest upon one strength, and this be it, imbarque in one bottom, stand upon one leg, and settle upon one and the same bough, let any Englishman take heed how he meddle with this common support, lest he infirm his own, and not be too venturous of the strokes of his Axe, for fear of danger to himself, by cutting the bough himself in his greatnessse, stands upon. He may think to pare about craftily, and with such prudent caution and an eye to himself, weaken the whole, that there be

## Of Civill Right.

strength enough left to support his Own Right : But this is neither safe nor honest : Not safe to tamper with a common foundation, to sprinkle fire in the next thatch, that may catch home ; to bore a hole at the other end of the vessel where neighbours wealth lies, thinking his own safe. Not honest, to designe any other mens equally Just and Due rights to be fed and preyed upon, to increase ones own heap , by taking (or with-holding) from anothers, or to wish the next house pulled down, and the inhabitants turned to the Common, that one may take as much as he needs of the spoil to multiply or strengthen the Studds of ones own building.

That which is just and Right shalt thou do, is the rule of the holy Law, This is neither : That thy Brother may live as well as Thou, a mercifull and conscientiable rule in Israel. This takes away Brother *Levi's* life, and leaves him a Beggar with others plenty. A Beggar is not uncapable of bounty, nor unfurnished with a hand to take what another shall arbitrarily give : But we are not so unacquainted with the holy Law of God , as not to know what heavy censures are there registred against those whose oppression, covetousnesse, or with-holding what is due shall make beggars. Now *Levi* an owner, as well as *Judah*, and by the same right as *Simeon* or *Benjamin*. The same equal universal all-giving,all-preserving Rule of Right, the Sacred common law gives Him he and others Theirs : 'Tis the pillar of the temple upon mount *Moriah*, as well as the palace upon mount *Sion*, establishes the Church-house, as well as the farm or Cottage, and giving every one his own, gives the Tenth part out of the Nine as well as the Nine whereout was taken the tenth. *Quare restat demonstrandum* : But first it may not be unprofitable to recapitulate, and shew how one and the same thing may drive it self through all the fore-going considerations. Take for instance a piece of gold, or Any thing, and see how those truths take place, or in this manner have their several operations , Thus.

I. In absolute consideration it is no ones : no more property of it by God or nature, then of the moon and stars : 'Tis mine, thine, his, every ones, no ones,

II. Ye

II. Yet it may be owned, or else much of the good of it would be lost, and the Courteous intents even of smiling fortune rejected by a sullen neglect of her proffered cheap favors. Bu'

III. Who shall make this division? I may not, nor another, nor any Man; Therefore 'tis fit, the Law.

IV. Which varying, yet all have agreed in some things, and that wherein they all agree is the best rule of partition and possession in the world.

V. But if severall States have fancies and wayes by themselves, not finding what is commonly good to be bett for them, they May, and their severall Owns be, what they by their select rules shall have chosen.

VI. And particularly in *England*, that under severall forms we have agreed to make severall parts of our one Rule, the English Law. So that then the gold above was

1. No ones: Yet
2. Might be some ones.
3. Whose, not Man, but the Law gives it to. The Law, I say
4. Universall in the world.
5. Particular (over-ruling) in any place.
6. With us, Ours.

Or cast an eye upon a piece of ground

I. That is certainly no ones by God or Nature; for shew me the text or clear reason that says 'tis, whose?

II. Yet it may be inclosed, (God forbid else!) For, are all possessors usurpers? or the word of God without meaning, that says, *Enter not into the field of the fatherless*? sure, he may have a field.

land, and yet neither destroy the other? Is not the interest of the Lord paramount consistent with that of the Meine, and his with that of the Tenant; and yet their properties and interest not at all confounded? King Charles his answer to the Remonstrance touching HVLL. 26. Maii, 1642. pag. 5.

Do not all man-kind know, that severall men may have severall rights and inter-  
ests in the self-  
same houle and

strength enough left to support his Own Right : But this is neither safe nor honest : Not safe to tamper with a common foundation, to sprinkle fire in the next thatch, that may catch home ; to bore a hole at the other end of the vessel where neighbours wealth lies thinking his own safe. Not Law

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## NOTE

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II, Yet it may be owned, or else much of the good of it would be lost, and the Courteous intents even of smiling fortune rejected by a sullen neglect of her proffered cheap favors. Bu<sup>t</sup>,

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Lord, and yet neither destroy the other? Is not the interest of the Lord paramount, consistent with that of the Mefine, and his with that of the Tenant; and yet their properties and interest not at all confounded? King Charles his answier to the Remonstrance touching HVLL. 26. Mass, 1641. pag 5.

v

II Do not all man-  
kinde know, that  
several men  
may have several  
rights and inter-  
ests in the self-  
same houle and

strength enough left to support his Own Right : But this is neither safe nor honest : Not safe to tamper with a common foundation, to sprinkle fire in the next thatch, that may catch home ; to bore a hole at the other end of the vessel where neighbours wealth lies, thinking his own safe. Not honest to designe any other mens equally Just and Due rights to be fed and preyed upon, to increase ones own heap , by taking (or with-holding) from another, or to wish the next house pulled down, and the inhabitants turned to the Common, that one may take as much as he needs of the spoil to multiply or strengthen the Studds of ones own building.

That which is just and Right shalt thou do, is the rule of the holy Law, This is neither : That thy Brother may live as well as Thou, a mercifull and conscientiable rule in Israel. This takes away Brother *Levi's* life, and leaves him a Beggar with others plenty. A Beggar is not uncapable of bounty nor unfurnished with a hand to take what another shall arbitrarily give : But we are not so unacquainted with the holy Law of God , as not to know what heavy censures are registered against those whose oppression, covetousnesse, or with-holding what is due shall make beggars. Now *Levi* an owner, as well as *Judah*, and by the same right as *Simeon* or *Benjamin*. The same equal universal all-giving,all-preluding Rule of Right, the Sacred common law gives Him and others Theirs : 'Tis the pillar of the temple upon mount *Moriah*, as well as the palace upon mount *Sion*, establishes the Church-house, as well as the farm or Cottage, and giving every one his own, gives the Tenth part out of the Nine as well as the Nine whereout was taken the tenth. *Quarestat demonstrandum* : But first it may not be unprofitable recapitulate, and shew how one and the same thing may drive it self through all the fore-going considerations. Take for instance a piece of gold, or Any thing, and see how those truths take place, or in this manner have their several operations, Thus.

I. In absolute consideration it is no ones: no more property of it by God or nature, then of the moon and stars. 'Tis mine, thine, his, every ones, no ones.

II. Ye

II. Yet it may be owned, or else much of the good of it would be lost, and the Courteous intents even of smiling fortune rejected by a full neglect of her proffered cheap favors. But,

III. Who shall make this division? I may not, nor another, nor any Man; Therefore 'tis fit, the Law.

IV. Which varying, yet all have agreed in some things, and that wherein they all agree is the best rule of partition and possession in the world.

V. But if severall States have fancies and wayes by themselves, not finding what is commonly good to be best for them, they May, and their severall Owns be, what they by their select rules shall have chosen.

VI. And particularly in *England*, that under severall forms we have agreed to make severall parts of our one Rule, the English Law. So that then the gold above was

1. No ones: Yet
2. Might be some ones.
3. Whose, not Man, but the Law gives it to. The Law, I say
4. Universall in the world.
5. Particular (over-ruling) in any place.
6. With us, Ours.

Or cast an eye upon a piece of ground

I. That is certainly no ones by God or Nature; for shew me the text or clear reason that says 'tis, whose?

II. Yet it may be inclosed, (God forbid else!) For, are all possessors usurpers? or the word of God without meaning, that says, *Enter not into the field of the fatherless?* sure, he may have a field.

land, and yet neither destroy the other? Is not the interest of the Lord paramount consistent with that of the *Mefne*, and his with that of the *Tenant*; and yet their properties and interest not at all confounded? King *Charles* his answer to the Remonstrance touching *HULL*. 26. *Mass*, 1643. pag. 5.

Do not all mankind know, that severall men may have several rights and intere  
sts in the self-same houle and

## Of Civill Right.

III. Who hath inclosed ? who might ? Surely, no Man. Therefore the Law.

IV. According to what *Effata*, or oracular determinations thereof ? In the world by the rules of the world : 'Tis his who hath most need, who first entered, who does possess, &c.

V. In a region who hath bought, inherited, succeeded, obtained, by descent, donation, exchange, purchase, &c. according to the forms of that Region.

VI. In Our nation, who by the just, pertinent, and impartial sentence and application of those all-giving forms with us it is settled upon, which also admits of some further variation : For,

1. By unquestioned maxime the whole originally was the Kings. He was *Directus Dominus totius*, though the *Dominium Utile* might be transferred to others. No Alodyes left amongst us : Independency (of all and absolute) a Monster. All the beams that shine below in the lower world come first from the sun, and what is in private stock from the publick store.
2. Yet all is not his now *pleno iure*, in full possession, and round about every ways : for he hath parted with Fees, Feefarms, Serjeanties, Socages, &c. to intrusted Lords.
3. His honours have Mannors, as Chips of the great block, whereof the Masters think they are to have some subordinate right.
4. And those Mannors also their sub-subordinate dependencies of free and copy-holders.
5. Either of which may have also their under-tenants for term of years, life, will, &c.
6. And these also let out the fruit to one degree lower, him that dwels in the house, manures the land, and immediatly, actually uses and possesses what so many others have their distinct superior rights and titles in.

Thus

Thus we see what may be by supra and substitution, how many considerations the same thing may passe through (each of which gives a new face,) before it settle any where: and how many things we must have consideration of, before we can distinctly know what is whose, and what Right, and no more, any one hath in any thing. Of all which the Basis is still the Law, wherein what footing, or rather rooting T Y T H E S have, is our work chiefly intended, and now next to be set about.

## C H A P.



## C H A P . V I I .



Hat right then have Tythes? I answer briefly, Manifold. It often comes to passe it is so, and that one and the same thing hath many firm bottom to settle on: Two feet for the most strength, two strings to the same bosome though one be enough, and four better then two; for a surplusage of strength does no way tend to weakness, nor an accumulation of titles mutually weaken or destroy: Now at least three distinct Rights, and each strong enough are here:

## I. Of Donation.

## II. Possession.

## III. Prescription.

Tythes were

1. Given.
2. Are possessed.
3. May be prescribed for.

Nothing they say is more free then gift; 'tis naturall, that what I have is mine own; 'tis strong if a long time I have had it, and All these conspire and meet to settle Tythes where they are. 1. One limb of every body of the Law is, *de Dationibus*, and after many rules and cautions, the result is an undoubted Right thereby. 2. What I have is mine own, it is so, I know it, and till the contrary be evinced, the world will judge on my behalf. 3. Continuance of possession (just or unjust) shall create a Right. He that once had title to the house I dwel in, let him come after a hundred yeer possession (in my self and ancestors) I dare now joyn issue with him,

*Item acquiritur  
nobis dominium  
jure civili ex  
causa donationis.  
Fleta lib. 3. cap. 2.  
fol. 17.*

*Bradib. 2. 4. 1.  
Civill Institutio.  
lib. 2. tit. 7. fol. 1.  
Mon. 8.*

him, it is Mine and not His, because I have Kept it. These things are known enough, and I aver they all meet here, that Tythes Were given, Are possessed, and Long enough to create prescription; A threefold cord is not easily broken, and here is that complication of 1. Donation sufficient. 2. Possession undoubted. 3. And Prescription for time over and over. To which adde, that each of these pillars hath also another strong stay by, to support the weight laid on it: Donation is bettered by Confirmation: Possession secured by him in whose right the possession is; *Dedimus Deo* was the form of grant, and is the ground of claim: Prescription is lengthened through more then half twenty times over so much as would simply serve the turn: And if these things be so, and they are, and all, and known, by the Law, be this supposed, and me thinks we may sing *victoria* almost already.

But they remain to be proved; by Gods blessing they shall: There is neither of them but lies clear in view to those are acquainted in those regions of knowledge (whether of Books or Experience) where a likely information of any of them is to be looked for; and I shall yet add one thing more as a Coronis at top, the opinion of the Learned in their own profession. One single self may have been deceived not inex-  
cusably; 'Tis hard for a stander by to be acquainted in all the rooms of a neighbors house; some sparks of true light have sometimes (by their not right use) but led private men to Errour; But as witnesses produced go for proof usually, and their agreement strengthens their testimony, and a conspira-  
tion of them professing to know, is the fairest of all presum-  
ptions against mistake.

If therefore the Lawyers themselves have apprehended thus with me, if they have combined and conjoyned to say so, if there have bin that combination and consent that they All have said so, and till within these few years no One would have been Fee'd to the contrary; nor, if he understands himself, will yet: from All these I shall not doubt to inferr a strength of presumption, that what men have said, the learned have said, the Lawyers have said, and All of them both have and doe, (no one to be hired to the contrary, whereas

## The Civill Right

they come in *gratis* on the other part,) hath much more then likelihood that it may be true which they aver , and for their assertion sake. From whence may we expect Credibility, if not from the voice of men , of All men , and they agreeing, and the Seers themselves giving their vote ? *In omnibus vel trium stabit omne verbum*, lays the Divine Law, 2 Cor. 13.1. Num. 35.30. Deut. 17.6. cap. 19.15. Mat. 18.16. John 8.17. Heb. 10.28. How much more, *In assensu & consensu omnium & singulorum?* That is a bad case which admits no plea, that no one will be hired to undertake, or can colour for, that neither hath substance nor shew. If therefore the grave and learned Judges (the Oracles of the Law) have gone this way, if the other reverend Sages (I comprehend all graduated professors) take in along with them, if it be the painfull knowledg of the Student, the costly knowledg of the Country-man, the experienced knowledg of most men, the generall allowance of All men ; Doubtless there must be so which one says, and another says, and a third says, and a fourth says, and every body says is so ; and most likely when the professing too , know , joyn in, and say so likewise.

We have made room enough , a large field to expatiate in. God be our guide, as Truth our aim, and success but as the righteousness of our Cause shall deserve for us : The first part of the plea was Donation : Which, because it is like to be large, the fast Corner stone whereupon to settle the chiefest of what follows, something would be said what it is, who may give, what, to whom, &c. It may not be safe to go on at our own heads. Here therefore again for the help of the Sages,

Donation then (says (1) Bracton) is a certain Institution that proceeds from mens bounty and will, no law forcing, to transfert a thing to another. Or, To give, (says (2) Fleta)

(1) Est autem  
Donatio quadam  
intuitione quae ex  
merita liberalitate,  
& voluntate, nullo iure cogente, procedit, ut rem transferat ad alium. *De aqua. et terram dico. cap. 3.  
fol. 12.*

(2) Date autem est rem recipientis facere cum esse donum. *Flet. lib. 3. cap. 3. fol. 1.*

## of TYTHES.

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is to make any thing his that receives it. But (3) *Cuiacius* lately thinks he hath hit it better then both, making it Properly the free alienation of any thing, with this minde that it shall not revert to the Donor. The first of thele may leave a rub in the way to hinder that we would by no means oppose in all this Tract, the free progress of that opinion, that Tythes are due *Jure Divino*: As it they be, how can we say they were Given in the sense there, *ex mera liberalitate, nullo jure cogente*: Or if the (4) Divine law did inforce, then how are they in this sense clearly given? I answer, well enough; as well as a man may give that which God had said before he should give; or do that freely, which the scripture yet irreversibly commands he should do: Give an Alms to a poor man, says the Scripture: which man does of himself, (the rather for that command) freely, and yet the divine Law was in force, and obeyed, to part with that a man was not bound to part with.

Give the seventh part of thy time, says the fourth Commandment; yet twas a voluntary (1) Act of our State, that in obedience to that command, but freely in it self, set aside this part here with us; They might, or they might not, else

negatione cunctis celebretur sitq; Divino tantum cultui dedicatus; — Om̄issisq; exterioribus negotiis, atque seculariū non conventibus, acie itineribus, nisi inexcusabilis qualibet causa urgeat, religiose con- verationis ac bene vivendi normulam de sacra scriptura eloquii subiectis famulis predicando inservient. Sed & hoc quoque decenter quod ad die sive per alias festivitates maiores, populus per Sacerdos-tum Dei ad ecclesiam sept̄us inv. tatus, ad audiendum verbum Dei conveniat, misericordia sacramentis, ac doctrina sermonibus frequentius adfici. *Concil. Cleves an Chr. 747. cap. 14. apud D. Spelman, concil. Briton. pag. 349*. Die dominico nihil aliud agendum est, nisi Deo vacandum, in hymnis & psalmis & canticas spiritualibus. *Excerp. Egbert. 104. circa an. Chr. 750. ib. pag. 268.* And for the forbearing of working, banishing, recreating, imploring, &c. are other fuller Laws: How the master should be punished, how the servant, &c. which by degrees brought off men from their accustomed common employments. vid. L. Inst Regni 3. circa ann 710. in Lombard. Archaión. p. 1. & Spelm. Concil. p 182. *Concil. Bergamstadi. ad ann. 697. can. 10, 11, 12 ib. pag. 195.* Excerp. Egbert. 16. pag. 262. *Fodus Edvardi & Gauthari regum. cap. 7. & 9.* apud Lombard. Arch. pag 41. agreeing with those under the title of, *Leges Eccles.* ab Alured. & Gutch. R. L. late cap. 10, 11. apud Spelm. pag. 37. L. Ecclesiast. & Etheliani R. circa an. 948. cap. 6. ib. pag. 400. *Conflit. Odonis circa ann 943. cap. 2. ib. pag. 417.* Leg. Eccles. Elgari R. ad an. 967. cap. 5. ib. pag. 445. & cap. 6. pag. 446. *Canones dati sub Edgar. cap. 19. ib. pag. 410.* *Concil. Eisham. circa ann. 1009. K. 30.* L. Eccles. Canuti R. circa ann. 1012 cap. 14. 15. apud Lombard. pag. 103. L. Eccles. Canuti, cap 14. & Capitulare investi temporis & authoris: cap. 14. in Spelman. pag. 600.

All which things and the reinforcement of so many, do shew how hardly men were drawn off their own ways: what need the Commandment of God hath of the abetting law of man that is may take place; and how clearly and fully that may be after given by man, which God appointed to be given: And now, to like, in that alone, which gave the due Sabbath day to God here with us.

I 2

they

(1) Est proprié donatio alie ratio rei qua liberalitati causa sit, haec mente ut nullo casu recipiatur. *Paratus. ad E. de donationsbus.*

(4) Domini vide- tur quid nullo jure cogente conceditur. *E. de diversis reg. II. 83.*

(1) Quanto deci- mo statutum loco, ut Dominicus d. ex legitima res-

they had not been free : but now, besides the fourth Command : it is secondy due to humane Justice (appointing it,) to have the Sabbath sanctified : So, Give the Lord the Tenth with a good eye , is interpreted to us the heavenly Oracle; yet when the believers came to obey, they did it freely, which they might not have done: *Nullo jure cogente*, that is, none in the same sort, none on the same floor, no humane lower positive law having set aside any thing, or commanded, though the higher Divine law had bound it to be more then expedient, which yet might not have been obeyed. The summe is, God may have said, the Tenth should be paid , Man have not obeyed ; but he did , and gave by the perswasive influence of Divine command, that which was his own, and he was bound by no humane Law before to have given : and so here is commanded , obeyed , and yet free and voluntary Devotion.

But, to go on, Donation, which was as before , is divided into (1) free, absolute, illimited, and meerly voluntary , & *sub modo*, under limitation or Condition , as, *Do ut des*, & *Do ut facias*, &c. Now although this be in it self most avoidable, as letting out into more ways of evasion , yet the thing conditioned be of evident necessity, as, I give that thou shouldest preserve this man from starving , to do such thing necessary in publick, or for the service of God , which is most necessary, or the like ; Now in this case the necessity of performance mounts up with the needfulness of the thing depending, for it is more expedient that such necessary things in themselves should not be left undone, then any one simple, declared, single will throng in to take place, which ye in Justice ought , though in this necessity (comparatively) ought not.

(1) *Donationum alia simplex & pura, sc. quia nullo iure civilis vel naturali cogente, nullo pretio, metu, vel vi interveniente, ex mera & gratuita liberalitate donantis, procedit : Item alia sit ob causam, vbi & causa interponitur, ut aliquid sias vel non fiat, &c.*

*Et hoc genus donationis impropter dicitur donatio brevis. lib. 2. cap. 5. foli. 3.*

(2) *Dare autem non poterunt illi, qui generalem rerum suarum non habent administrationem, sicut sunt minores, incarcerauti, surdi & muti, & naturaliter furiosi, &c.* *Flo lib. 3. cap. 3. foli. 10.*

Further, who may give ? and 'tis answered , All, that are under no prohibition : As, are (2) those that have no

power

power of themselves, as Pupils, who are like to make their condition (3) worse, (though they may contract to benefit, though not to loss;) and for this reason the Church also, (4) which is always as a Minor: likewise the deaf and dumb, &c. nor the (5) person of a Church, because he is in possession, but in right of his Church, and so hath nothing to give, for what he hath was given *Deo & Ecclesie*, who are the proprietaries, he but the usu-fructuary, and so cannot dispose of another's.

(5) Idem dicendum erit in rebus Ecclesiis qui nihil possident nisi nomine Ecclesie sive, unde nihil dare possint, alienare vel permutare, nisi de consentaneis episcopi vel patrionis, nisi inde meliorerum conditio Ecclesie; si autem deceteretur non valet, quia sit eis donatio secundario, sicut maxime patet in ipsa dedicatione, & etiam post dedicationem, *Deo & Ecclesie* tali, &c. *Bratton. ubi supra.*

For, to whom; (1) To any one: Bond or free, Minor, or of full age, Jew or Christian, But not to a wife, not (2) to the Church in Mort-maine, except by license, (for every thing is to be kept within its due bounds; and a proportionable equality is like to be the Mother of longest duration: A monstrous growth tends to the sooner ruine, of it self or the whole; and therefore in its favour it is provided, the Church may not spread too big, lest *pondere pressa suo*, it fall with its own unwieldiness.

Lastly, What may be given? What is Corporall or in visible, a possession or a right, a whole or a part, but not what is (3) no ones, as is every thing sacred: This is supposed out of every ones reach; 'tis no bodies (on earth) and so none can lay (4) hand of it to give it forth to another.

*lib. 1. cap. 12. fol. 8.* Extra patrimonium verè res sacrae & Communes: *F. 1. lib. 3. cap. 1. fol. 3.*

(4) Item donari non potest res que possideri non potest, sicut res sacra vel religiosa vel quasi qualis est res hinc: *Bratton. fol. 14.*

(3) *Vid. Brat. de acquirend. verum dom. fol. 12.*

(4) Vice autem minoris fungitur Ecclesia Dei: *id. ib. & fo. 32. & Cœk. Influs. 1. fol. 34. fol. 644. Agreeing with the like favour of the Civil law.*

(1) *Flet. lib. 3. n. 4. fol. 1. pag. 179. Bratton. ubi supra.*

(2) *Quibus dare inhibetur: Flet. lib. 1. fol. 1. cap. 5. & Magn. Chars. c. 36.*

(3) *Nullius autem sunt res laicæ & religiosæ & sanctæ. Quod enim divini juris est, id nullius in bonis est. Influs. 2. de rerum dispositione. fol. 7. F. ib. 1. fol. 8. lib. 2. fol. 1. sacra. Bratton.*



## C H A P. VIII.

*A little before the  
year after Christ's  
600.*



These things may seem needfull to have been pre-considered of gifts, to the intent wher follows may not seem to have crossed the generall Doctrine. Among particular instances whereof to our purpose, begin first with the head, that which was to *Augustine*, or in that *Augustines* time whom some lo-

to call the Apostle of the English men: who found most of this English part of the Isle as Barbarous, as the whole like to be when covetous men may save this expence. We censure not what the grace or power of God can do, but i likelyhood what he will. Miracles are not to be multiplyed without cause, nor he to be put out of his ordinary course By-causes; according to which we are likewise to expect and judge that will be, in humane probability is by them Like to be. He then found here the land dark as *Sodome*, the soul of men over-spread with Atheism and Idolatry, and no trut or knowledg of God, which he divulged successfully, and took care, (or the blessed Providence of God brought to pass) that the Vine and the Elm were planted and have grown comfortably together, Christian Religion and this acknowledged good support thereof being by one and the same Hand both planted and rooted; and as they were born, and have lived, if any be, God grant as Twins they be not taken away together also.

But whence does this appear? we should gladly have taken it up from *Bede* or *Malmsbury*, or any other creditable story, but we have it from what was more authentick, the most substantiall credit of a solemn law: By all mens leave, This shall

shall be more creditable then any private Mans words ; what is planted and shining in any publick past law, being less subject to forgery and subornation then any single simple mans Testimony whatsoever. In King Edward the Confessors Laws then thus we finde.

Of all (1) Corn the Tenth sheaf is due unto God, and so to be paid. And if any keep Mares, the Tenth Colt; but if he have but one or two, so many pence. So if any keep kine, the Tenth Calf; or if one or two, so many half pence. He that makes Cheeses, the Tenth ; or if not, the Tenth days milk. In like manner, Lamb, Wool, Sheep, Butter, Pigs, of all the Tenth. The tenth also of the commodity of Bees, and of Wood, Medow, Waters, Mils, Parks, Ponds, &c. the Tenth to him that gives both Nine and the Tenth. He that detaineth, let him be forced by publick Justice, (so I interpret that called there the Kings and the Bishops, because their powers were then represented together to confirm both ways, Civilly and Ecclesiastically : ) for so preached and taught blessed *Auguſtine*, and so was granted by the King, the Lords, and the People.

Thus far that solemn Law , the authority of whose testimony we shall (2) hereafter more fully set forth, when, for the sake thereof, we shall shew the whole collection to be one of the ancientest pieces of the Common law, so often called for by the people, confirmed by the King, and entred into the Coronation Oath, &c. In the mean while , by all the credit this testimony can give, *Augustine* preached Tythes, the People believed, the King and Parliament granted ; for what can be less meant by, *Concessa sunt à Rege, Baronibus, & Populo?* and under the specification of Colt, Lambs, Fleece, Corn, Milk, Honey, and most particulars claimed.

Let no man take advantage, by thinking me so unadvised as to suppose Parliaments so early under that name, which I know came in long after, and whatsoever should carry that title applied in strictness to any thing beyond a good way in the Norman times, I should suspect it for Counterfeit : but that Publick meeting which had the power and vote of the Land, consisting of the Head and its subordinate Members, call

(1) De omni  
anno 12, &c.  
The Latin u. after  
transcribed, pa. 79.

(2) Vid. pa. 90,  
91, &c.

## The Civill Right

call it Senate, Gemote, Court, Councell, or whatsoever else  
the Collection and Congregation of the Land granted  
this.

*Vid. His. Eccl. lib. 1. cap. 26. in fin. & cap. 27.  
Integ. I.*

Object. I know well what may be said to the contrary:  
as that Bede who lived soon after, and reports that story  
of Conversion at large, and is most authentick for those  
times and the following, says nothing of any such thing:  
not when he had just occasion so to doe: 'for he speaks  
both of Augustines entertainment (a few lands) and his  
sending back to Rome about Church-maintenance in general,  
and how it should be divided, but not a word of  
TYTHES.

Whereunto I answer, True this: but, what then?

Answ. 1. Negative testimonies are the weakest of proofs,  
upon the matter no proof at all; as silent witnesses that say  
nothing,

If Bede had said any thing we should have much listened  
and that whether he had spoke against or for us; but saying  
nothing he is but a mute, and no more to be regarded stricly,  
then he that is called, comes in, and is silent.

2. As to his yet mentioning other things neer, the time of  
both was but when yet things were raw: when he had not  
preached, nor the people beleeved, or in reward settled what  
they may have afterwards. Time does much, nothing is begun  
and perfected at once; the story is plain, the questions  
sent to Rome, of which we have account, were, the first re-  
turn of *Augustines* success: and petition for supply of Council  
thence, and so might prevent what was after done, and it be  
too soon there to mention what was not till after, granted.

3. And the first of those questions was onely of oblations, as  
a part, and whereof might be the greatest doubt, not exclusive  
of other things.

4. Neither were those oblations all that was, positively: for  
*Augustine* had then other things, &c so that expression not so full  
and comprehensive as to infer any thing from it as compleat.  
For the King had given him (1) good entertainment at first,  
imperii sui totius etate Metropolis) Bisque ut promiserat, cum administratione vires temporalis licentiam quoque pra-  
dicandi non abfusit. *ap. 23.*

(1) Dedit ergo eis  
mansioem in  
Civitate Doro-  
vernensi (qua  
imperii sui to-  
tius etate Metropolis)

(no doubt continued) and (2) afterward, besetting his degree, as one to whom he had intrusted his soul, another place (3) I think his own palace in Canterbury, with needful accommodations of severall sorts. What those *Necessarie in diversis speciebus possessiones*, were, I know not: I beleevē they could not be comprehended within the oblations in the question mentioned, and so that not comprehensive of all was allowed.

(3) Donatusque à Rege ahe regia Cantuaria in Episcopalem sedem, & aula Regia in Ecclesiam Cathedram Christo erigend m: sic ut æmulari Rex videtur quod ab Imperatore Constantino Magno factum pertinuerit. *Vita sancti Augusti apud D. Spelman. Concil. p. 92.*

5. 'Tis yet liker they were Tythes, in *specie*, for King *Alured* seems to have borrowed such a law from this King. My reason is, because when after he composed a body, with a preface as from *Leviticus*, wherof one branch is for Tythes, he lays of the whole, that he thought it (4) too great presumption for him to attempt any such thing first anew, and therefore he modestly borrowed, with the advice of his Councell, from his Ancestors *Ina*, *Offa*, and this *Ethelbert*, *Qui primus Anglorum sacro tintius est Baptismate*, the first of Christians. Now for *Ina* we are sure enough of him, by the laws extant, he had none such; if *Offa* had, then either this was that *Alfred* related to, or it was not. If it were, then has *Offa's* Law much confirmation in this of *Alfred*: If it were not, there could be no other to relate to, but this of *Ethelbert*.

*literam monumentis consignare, cum etiam incertum sit qualem apud posteris habuita sint fidem quæ nos magi facimus, quæcumque in Actis Inæ gentilis Meri, Offæ Merciorum regis, vel Ethelberti, (qui primus Anglorum facio tintius est baptismate) obserua digna depicendi, ea collegi omnia, reliqua plane omitti: Lamb. Arch. p. 12. Spelman. Concil. p. 363.*

6. Yet more likely, for that before Any other Act passed (this of *Offa* or any other, that we read of) here were tythes said to be paid: For (5) Boniface Archbishop of MENTZ, blames the then Clergy here for neglecting their Cures, yet *Lac & glam ovium Christi oblationibus cotidianis ac decimis fidelium accipiunt*. Now he lived about the year 745. and before *Offa*, or any other Act we read of but that of *Ethelbert*.

(3) Nec distat  
quon ipsi suis  
docto bus locum  
fedit orum gra-  
ui congruum, in  
Durovia Me-  
tropolis sua donas  
et simul & ne-  
cessarias in diversis  
speciebus  
posselli vix con-  
teret, id. cap. 26.

(4) Has ego  
*Alfredus Rex*  
factiones nunc  
num Collegi,  
atque eadem  
littere mandavi,  
quarum bonam  
certitudinem ma-  
jores nostri Re-  
ligiosæ colue-  
runt, multa etiam  
&c. Ac quo-  
niam temeritatis  
videatur ex suis  
ipius decretis  
quenquam plura

(5) In an Epistle  
to Cuthberts Arch-  
bishop of Canter-  
bury, de corri-  
gendas vitiis  
Anglorum, about  
the year 745.  
ad pag. 240.

This sure : we have here a plain affirmation , in a clear hand, and so not rashly to be left for any private conjectures, or blinde presumptions, and that in such a place , that, save a *Domus-Dei* book, or a few other , we might not look for more authentick from the tendryes of that age. Some credit uses to be given to places; we least suspect forgery in Church-window , or Palace-Inscription ; and an historical truth shall never shine with that evidence , light and credibility to my soul from *Tacitus* or *Tranquillus*, casually let fall or engraven in the face of a Roman-law, or publikly inscribed in the commanding Pandects or Novels. Especially sith, here was said to be a consent of King and people: which last if they had not consented, here would have been worke enough: every simple man would have been a single accuser, & every neighbour at hand a ready witness : Kings and may have many eyes upon them; but to fater any thing upon the people undone or untrue, were to create a Commonwealth of enemies at once , every one with his accusation ready clamor loud enough against the forgery.

We will say then, *Austine* preached tythes; and the King, Barons, and people beleaved, and obeyed and conserued them : And observe thereon , their date began with the blessed entertainment; tything and preaching went together the first , from the first and alwayes. 'Tis uncourteous part old friends, hard to slope the skin from the flesh, dangerous what hath long gone and grown together. Accustomed food proves lightly wholsomest, they that change for better often fall sick of their remedy, and to be weaned from the aged man hath been accustomed to, and found wholesome from infancy, cannot but create much danger to the body by change, if not utter dissolution. Which 'tis easie to apply here ; and sith, minister to Christ, and live by Tythes, are intwined together among us as they are , and alwayes have been, God grant the event extend not beyond good mens desires, intents, doubts, or fears, that the whole frame of the long continued Church , sink and fayle , upon stirring (if they should be stirred) this united and neer co-incorporate pillar.

that hath hitherto outwardly sustained it. If it be charge or trouble, it may be born by the experience of a thousand years: If men love their ease now, so they did heretofore: If they are now wise, they were not then altogether destitute of wisdom: Lay together, that the clear policy of the Old-Testament went thus, all along, the generall practise of the New-Testament hath been according; Here with us ever since the bright shine of the Gospel dispelled heathenish darkness, and from the very day-break of Christianity to this instant, it hath been judged best, and is; what new plots would do is uncertain, and may have the accompanying danger of experiment upon sick or sound bodies to disturb what is strong, or ruine what is decaying.





## C H A P. I X.

**B**ut to proceed : and in what follows we may perhaps light on more clearnes and particularity : At the darkness of this remote diſtance we may not look to see every Mote, but as things draw nearer, so shall we see clearer.

This of *Augustines* time may have been only in Kent, for there he ſetled and Chiefly lived ; the next will look to the cold Climate, and in the next Miſſive, (which was about 200 years after,) ſee what took effect more Northernly. *sc.* In an Embaſſage directed to *Offa* King of *Merceland*, and *Ælfwald* K. of *Northumberland* with their Archbiſhops, where the Commissioners were *Gregory* biſhop of *Oſtia*, *Theophylact* of *Todi* (in Italy both) and they came first to *Offa*, (it seems because neareſt) and he, (because the buſineſs might concern him) ſent and called to councel *Kenwolfe*, (or *Kynewlfe*) King of the West Saxons. There the work was diſtributed : *Theophylact* stays about *Merceland* and *Wales*; *Gregory* and his assistants go to *Ælfwald* (or *Osward* King of *Northumberland* and *Eanbil* his Arch-biſhop, where a Parliament was ſummoned, or that which had the nature thereof, a meeting of both States, (*Convenienter omnes principes regionis tam Ecclesiastici quam ſeculares,*) and the 17 of their decisions this; *Decimum Septimum caput: (1) de decimus dandis ſicut in lge scriptum eſt: of ſetling tythes according to the Law.* (2) The tenth part of all thy fruit, or thy first fruits thou ſhalt bring into the house of the Lord. And again by the prophet, Bring all the tythes into my barn, that there may be meat in my house, and prove me in this, if I will not open the windows of Heaven, and pour out blessing abundantly :

*The account of  
theſe meetings in  
theſe and more cir-  
cumstances is re-  
turned in an Ep-  
iſtle to Rome abo: 1  
the year 786. when  
the ſhining were done  
by one of the Com-  
missioners, and  
published by Illy-  
rius in his Cen-  
tury: Vid. Cent. 8.  
cap. 9. col. 316.  
edit. 1614.*

(1) *Ib. col. 320.*

(2) Decimam partem ex omnibus frugibus tuis, ſeu primis de- feras in datum Domini Dei tui. Rursum per pro- phetam: Adferre inquit, omnem decimam, &c. *ib.*

abundantly: and I will rebuke the Devourer for your sakes that destroys the fruit of your land, and there shall not be a vine barren in your field; the Lord saith it. As the wise man speaks, no man can give his own alms of his own, unless he first separate to the Lord what from the beginning he hath required to be his. And hence often it cometh that he that will not give the tenth, is reduced to the tenth. Whence with all earnestness we command, that All study to give the tenth of all they possess, because it is the Lords peculiar, (or reserve) and live of the nine, and be bountiful as they can.

This was proposed in the Assembly, and besides the King and Clergy, confirmed with the assent and subscription of all the Elders, Captains, and people of the land; (1) consenting the Judges, Peers, and Nobles: And so to King *Offa* and his Elders (or Senators, or Councillors, *Senatores* is the word) who did the like, his Princes and Clergy setting their markes: *Brorda Dux signo sancte crucis subscripti. Faxwaldus Dux subscripti. Beroaldus Dux subscripti. Othbaldus Dux subscripti:* with a cross as the manner then was in their serious and religious confirmations.

A most observable Law, says Mr. Selden, if it be genuine, (as why should it not?) being made by both States, and of two Kingdoms: It is not like *Illyricus* forged it, or would venture it to light, without some Authentick authority, considering who he was; and what he is there a doing: the phrase, stile, and forme speake much the tone of that age: Our (2) Sir *Henry Spelman* followes him in the substance, though not in the circumstance, giving it due place in our Councils since published; and unless we will question every thing, why should we this? He hath added the name of the place, *Concilium Calchthense*, that is either *Chalchuth*, or *Calchuth*, or *Celchyth*, or *Ceal tide*: for these several variations I find; which *Camden* places in *Northumberland*, though he had rather finde it in the higher Climate of some part of *Mercia*: I should seek for it between *Tork* and *Durham*.

(1) His quoque  
saluberrimis ad-  
monitionibus,  
Prebyteri, Dia-  
coni Ecclesiarum,  
& Abbates Mo-  
nastrorum, Ju-  
dices, Optimates,  
& Nobiles uno  
opere, uno ore  
consentimus &  
subscribimus. *Ib.*

(2) *Vid. Concil.  
Brit. pa. 291. et  
pag. 298.*



## C H A P. X.



Ne thing more is observable, than although *Kenulph* King of *West-Saxon-rie* were present at the first delivery of the Letters, we hear no more of him afterwards, the approbation and subscriptions having onely the countenance of the more Northern parts; for Tythes may not yet have been generally settled, save in *Kent*, by *Ethelbert*; and *Mersea* and Northwards, as but now; which yet was after done ere long, and namely by that *Celebris donatio Ethelwlfphi*, so much spoken of. This clapped the severe and absolute injunction upon all the Kingdom, (having power so to do, as the other had not) infolding every part that was under his power, (and all was) under the same constraint, so that now to Tythe was as generall as to reap, and by a Catholick command from sea to sea, and from the flood to this world end, Gods Ministers had now an appointed and settled livelihood wherefoever man had.

For the better understanding whereof, this of story would be taken in by the way: That (1) *Egbert*, this King *Ethelwlfphs* father had gathered together (no longer before) the dispersed pieces of petty-Royalties here, into one greater Monarchy, and bruising and battering the Coronets of seven (at the remainder of seven) lesser Kings, had cast them all into one greater Crown, moulded for his own head, and left the power to this his son, under the Title of Monarch of the Nation, or King of England. A fit time to do any great work, and make or perfect such a change, as should be Catholick and uniform; not now, This and That,

(1) Cognoscendum igitur est, quod eodem hic titulo utitur E. *ethelwlfphus Rex*, quo Egbertus pater suis bellicosissimum acquisivit, cum universam *Heptarchia* sua subjugasset dirioni: and how, *Vid. Salm. Concil. pag. 351; 352.*  
*Spond. Chron. lib. 7. chap. 31.*  
*Polyd. Virgil. li. 5.*  
*pag. 89, 90.*

but one and the same throughout the Nation. Before him, it was King, (or Kings) of Britain till the *Cesars* came: Then, *Aulus Plancius, Ostorius*, or others, Lieutenants of Britain: after, the fell Saxons gave denomination to their severall shares of a conquered Heptarchy, and we had South, East and West-Saxons, besides Kent, *East-Angles, Mercia*, and *Northumberland*: But this *Egbert* mastered All, brake (2) the image of *Cadwaline* last King but one of the Britains triumphantly placed over *Ludgate*, crushed the power, and obliterated the partiall names of his own Countrymen, and made all stoop to his sole Command, under the new name of The Kingdom of *England*, (whereof he was sole Monarch) which ever since through ages hath to this present remained.

These things prepared, as was said, for the uniformity of any work to have its extent and operation upon All, and being remembred, makes way for that Donation, which heed, is Hire given under that name: Other before may have had the substance, but they had not the proper term, this both name and thing, under the title of, *Celebris illa Donatio Ethelwiphi*. Which what it was, take information first from him that had a great hand in preserving the Common-law from the spoiles at the Conquest, and lived neer those times, *Ingulphus*.

The most noble King of the West-Saxons (faith he) *Ethelwalph*, when he had returned from Rome visiting, with his son *Alfred*, the habitations of *Peter* and *Paul*, &c. by the willing assent of all his Prelates and chiefeſ, that under him were over all the Provinces of *England*, had then first endowed All the English-Church (for ſome peices had been before, but there wanted a Soveraing power, or the union of the parts

(2) Seev. Chron.  
in the life o. the  
Egbertis pag 99.  
& Speed. vols 1-37.  
fol. 6.

Inclitus Rex Westsaxonum Ethelwilphus, cum de Roma ut limina Apollolorum Petri & Pauli, ac sanctissimum ipsum Leonem multa devotione, una cum juniori filio suo Alfredo peregrinata, noviter revertitſet, omnium prælatorum ac principium ſuorum, qui sub ipso variis provinciis totius Angliae prærarent, gratuito conſensu, tunc primo cum decimis omnium terrarum, ac bonorum aliorum five catalogorum universam donaverat Ecclesiā Anglicanā per suum Regium Chirographum confectum inde in hunc modum.

Regnante domino nostro in perpetuum, dum in nostris temporibus, per bellorum incendia, & direptiones op̄m nostrarum, nec non & vastantium crudelissimas hostium deprædationes, barbarus & paganarumque nationum multiplices tribulationes ad affligendum nos pro peccatis nostris usque ad intermissionem, tempora cernimus incumbere pericula.

Quamobrem ego Ethelvulphus Rex West-saxonum cum consilio Episcoporum ac principum meorum consilium salubre ac uniforme remedium affirmantes, consensimus, ut aliquam portionem terrarum hereditariam, antea possidentibus omnibus gradibus, five famulis & famulabus Dei Deo servientibus, five laicis miseris semper decimam mansionem, ubi minimum sit, tum decimam partem omnium bonorum in libertatem perpetuam donari sanctæ Ecclesiæ dijudicavi, ut sit tuta & munita ab omnibus secularibus servitutibus, imo regalibus tributis majoribus & minoribus, five taxationibus quæ nos dicimus Winterden, sive libera omnium rerum, pro remissione animarum, & peccatorum nostrorum ad serviendum Deo soli sine expeditione & pontis extractione, & arcis munitione, ut eo diligenter pro nobis ad Deum sine cessatione preces fundant, quo eorum servitutem in aliqua parte levigamus. *Ingulph.*

(1) Rex verò Ethelvulphus pro firmitate ampliore obulit hanc chartam scriptam super Altare sancti Petri Apostoli: & Episcopi pro fidei Dei illam acceptum, & per omnes Ecclesiæ postea transmisserunt in suis parochiis publicandā. *Ingulph. ubi sup. fol. 6.*

position) but that it be devoted to Gods service alone, that the possestors may pray so much the more diligently for us, as they have fewer occasions to disturb them. This was done at *Winchester* in S. Peter's-Church, Anno Dom. 855. present and subscribing all the Arch-Bishops, and Bishops of England, and Beorreor King of *Mercland*, *Edmund* King of the *East-Angles*, and a numberless number of Abbats, Abbesses, Dukes, Earls, and Chiefs of the Land, and other approving beleevers: And the (1) Charter was offred upon the Altar, and there received for more religious confirmation.

to extend this good work over All) with the Tythes of Ali land, (mark the extent again) and other goods or catties, which he did by his Royal Patent, thus:

Our Lord Christ raigning but we tossed up and down &c wherefore I *Ethelwulph* King of the West-Saxons with the advise of my Bishops and Princes, resolving on some wholesome remedy, have agreed that some portion of my lands formerly inheritable by whosoever, should now as to the tenth of the whole be set aside (for th s I conceive to be the fence, the words scarce affording any, but by comparing other accounts, this seems the thing meant) for the servants of God, and a like tenth part of my goods for the Church; so free that it yeeld no secular service, nor tribute (more nor less) nor *Winterden*

(or *Witterdene*, a kind of im-

This

## of TYTHES.

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This I take to be the sence of what was there done: (2) *Matthew Westminster*, (3) *William Malmesbury*, *Ethelward*, and others give several accounts, but tending this way, and so great consent is in substance, though variation in expression, that no one can doubt some such thing was done, men so much varying yet agreeing to report. No one undertakes to make good all of every thing he makes use of, and here was interspersion of Abbots and Abesses, offering at the altar, with Saints and Angels interested and the Virgine *Mary*: but such commixtures do, we know, no more invalid the strength is adjoyning good and sound, then the like in *Magna Charta*, or the most of all ancient Parliaments, or some dispersed spots in the Common Law. He that shall once give his busie humor leave to work, and question things sufficiently done by some infirming circumstances, will soon leave little enough of approved firmness (by the same strict rule of estimation) anywhere, no not of those foundations whereon are raised and stands the stability of the chief worldly things we here injoy. This is sure, the grant was made, and let the injoyed benefit speake the fruit to our time, the providing for a helpless Church, and it should seem so firm it needed not be again, nor was after; for 'tis observeable the stile henceforth changed, and men do now no more Grant, but Confirm; nor had they need Part with so much as Assure, nor voluntarily Give, but yeeld to Pay.

Which we shall observe as we go along: In the mean while as to the doubtful words, various hath been the construction, and learned revisors have not all found the same thing in them.

(1) *Ro. Stow* takes it to be a parcel of land: (2) Doctor *Tildesley* contends for it by six reasons: Sir *Henry Spelman* (inclining thitherward) knows not where to finde the benefit save in the parsonage house and glebe (though it may be well enough thought how they came in afterward, and otherwayes.) (4) *R. Hollingshead* slubbers it over with a right or liberty (from burdens) to tythes, (so (5) tythes Then in his

of England, in the life of thi King.

(5) He ordained that Tythes and Lands due to holy

be free from all Tributes and regall services. Speed hist.lib. 7, cap. 32. fol 6.

(1) Adams. 855.  
(2) Geff. Reg.  
Ang. lib. 2, cap. 2.

(1) Chronic. in the  
life of K. Ethelred  
Wolph, pa. 99.

(2) An advoca-  
tion on M. Seldens  
History of Tythes.  
cap. 8, pag. 173.

(3) Council. Britan.  
tom. 1, pag. 352.

(4) In his History  
of Tythes, found

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acknow-

## The Civill Right

(6) *Martyrolog.*  
lib. 3. pag. 336. ad  
an. 844. in the  
life of Ethelwlfh.  
(7) *Ier. Stephens*  
in pag. 232. of  
*Sir Henry Spelman*  
of *Tythes*.  
(8) *Mr Sc'den in*  
*his Hist. of Tythe*,  
cap. 8. pag. 206.

acknowledgement were.) (6) Mr. Foxe somewhat faintly; the tythe of the Kings lands and goods in *West-Saxon-ric*; (with freedom from servage.) But a (7) late settler forth of a very learned and pious tract of this argument alledgedeth for a perpetual right of tythes: and above All, (8) he that had compared most accounts and was as well able to judge any; and now after neer thirty yeers of painful and successful study is yet living, and ready no doubt to make good his constancy, and justifie his opinion, then published, and now appearing yet revokd, makes it out clearly for a right and law of tythes: His words are these.

If we well consider the words of the chiefest of those anents, that is, Ingulphus, we may conjecture that the purpose the Charter was to make a general grant of tyths payable freely, and discharged from all kinde of exactions used in that time according as the Monk of Malmesbury, and John Pike in subplement of the History of England exprest it. Decimam (they) omnium hidarum infra regnum suum a tributis et exactionibus Regis liberam Deo donavit: that is, granted the tythe of the profits of all lands, free from all exactions. For the granting of the tenth part of the Hides or Powlonds, denoted the tenth of all profits growing in them as well as Decima as sicut aratum peragrabit, which is used for the tything of profits, in the Laws of King Edgar, Ethelred, &c. doubtles Ingulphus no otherwise understood it then of perpetual right of tythes given to the Church, where he remembers it with tunc primo cum decimis, &c. So that the tythe predial or mixt profits was given, it seems, perpetually to the King with consent of his States both Secular and Ecclesiastick, and the tythe of every mans personal possessions were at that time also expressly included in the guift, because (it seems) before that, (hitherto that learned man) the payment of all tythes had commonly been omitted. Not so neither; in what was then the operation of those weak, and yet intended strong and powerful Canons before mentioned, made with so good advice, and strengthened with the twisted powers of both States in Mercia and Northumberland, besides what in Kent, a Rege, Baronibus & Populo? But for All the land

it seems none before had power of imposition; and for West-Saxony none had attempted; (for the King that was present at opening of the letters, we found not there at the conclusion of the businesse (1) before:) So that *Tunc primum* for this and for All together, the decree might go forth here successelfully, and the liker it did, for that (as before) we read of no more Donation, but Confirmation, no need to Settle after, but order, as was said, to Pay.

(1) Pag. 70.

So that considering the power was then vested in the Monarch-granter, and also the consent of Tributary, and, as it were, pupil-Kings, with Nobles, Peers, and all their people: Consider likewise the interpretation of dark words by those whose inspection was like to pierce deepest into the meaning of what was delivered (or is perplexed) with obscure exprefſion, And after interpretation fairly setting of such a purpose, we need not doubt to conclude: That so long agoe as those remote times, about 800 years since, above 200 before the Conquest, even then when the Common Law was but in her swadling-clothes, whereof little hitherto, (if she were then born, as I beleeve she was,) Even then, and as soon and fast as we may believe the power of Christian Religion to have had its work in the bosome of beleevers to make them contrive a continuall and settled ſupport for their foul-saving new-come Gospel, Tythes had a publick vote, which created a legall Right; And, though I will not fay All was done accordingly, and the objection of after Arbitrary consecrations poſſible in ſome ſenſe, may take place in their way notwithstanding; yet as farre as Law may create a right, Then were Tythes no longer a part of Benevolence and Bounty, but of distributive or retributive Justice, every one living within the compasse of the Church being bound to pay back this ſupport for the Ministry thereof, in fulfilling those generall Canons of the New-Testament, that call for maintenance, and would not have the labourer uncertain of his reward, but the Oxes mouth unmuzzled (to take thus much) and the Catechift to partake with the Catechumene in all his goods.

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For we are not to look upon Regall and Legall commands, as empty Cracks, fit onely to fill the world with noise and clamour, and exercise the chat of the busie multitude, or learned mens discourses, but Canons well mounted, which being discreetly levelled also, are able to make their way through whole squadrons of opposing Rebels to Law and Justice, of that irresistible power, that though private men would, they cannot contradict, evade, or gainsay ; As being those words of publick vote and highest authority, that if they say, Yes, will have no Nay, The most serious disputes and results of Reason that are extant amongst men, and that have this soveraigne property always annexed to them, That they of all other look not to be Disputed but Obeyed. *Lex est sententia, qua bona cum precipiuntur, cum mala prohibentur,* (laxes Jo. Calvin) *Ius est authoritas seu facultas agendi secundum legem.* *Iustitia est virtus perducens ista ad exercitationem.* Proinde quoties audis has voces, *Lex, Ius, Iustitia, statim cogita, monente Oldenb. reddivum aliquid atque excelsum andire, hoc est, veram & i Deo ipso dictatam honestatis formulam.* Almost the voice of God, and not of man, as if they were.

*Lexie Swithfrud.  
pa. 526. in vocab.  
Lex.*

Neither is one thing more to be omitted, who was present and assistant at this great work, Him I take the world to have since owned and remembred by the reverencing name of (1) St Swithune : formerly the Kings Christian Tutoour, now his Chaplain, Bishop of Winchester, and (2) successor of the King himself in that See, blessed by God to keep the

(1) *Vid. Spelm. Cœsil. tom Ed. 2a,  
349.*

(2) *For the King was committed first to the Care of Helmestan Bishop of Winchester, and by him configned over to Swithune : Helmestan dying, he was made a Deacon, and still, if not Confessor Bishop of Winchester, and thence resumed to the Crown. Speed Hist. lib. 7. cap. 32. sect. 1.*

*subdiaconatus ordine initiatus. Polyd Virg.  
Hist. lib. 5. pa 91.*

*Vid. Lew. Chron ad a. 829. & Hen. Huntington. lib. 5. pag. 348.*

Kings heart, and the state of the Re-publick firm to Christ in that tottering age, when it was hard to keep all from reclining and relapsing to flat Idolatry. For they had lately worshipped stocks and stones, and given the immediate issues of their soules in their thanks, praise, and All devotions to the works of the

their own hands, (3) *Tuisco*, *Woden*, *Thor*, *Frea*, *Seater*, (4) *Herthus*, *Flint*, (5) *Ermensewl*, (6) *Tibba*, (7) *Eoster*, and such other sometimes worshipped for Gods and Goddesses here, whose names are now either almost happily forgotten, or if remembred, not very easie to be understood. But it seems the Holy Christian *Swithune* joyned in with his formerly pupil, now Lord and King to keep him close, (&in him virtually and potentially All,) to the heavenly teaching of the Bible; and that the doctrine thereof might continue, they added this pillar of worldly maintenance (the having a hand wherein might procure *Swithune* so reverend an estimation in Christians memories ever since,) (according to the patern in the mount, their guide, *Levi* of the Old Testament,) To sustain and provide for the Preachers and Ministers thereof: And God so blessed, that as that gift has remained sacred and inviolable hitherto, so by it the ministrition and Ministers of sacred Christian Mysteries have had a subsistence ever since, and endowed preachers been as so many Candlesticks then set up, which resting on this pillar, have held forth that light of heaven which yet we enjoy to this present day. Future superstitions may have made unnecessary additions, and the honour justly given to the memory of this good man, for a work so gloriously deserving, in the name and reputation of

(3) The names of sundry Idols here worshipped before the Golpel enlightened: And as the Pagan Romans made theirs preside over the dayes of the week, whence *Dia Solis*, *Dia Luna*, *Mercaris*, *Martis*, &c. so here they called the dayes from them, if not more, and we yet retain the memorall thereof in *Sunday*, *Monday*, *Tuesday*, (or Tuesday) *Wednesday*, *Thursday*, *Friday*, & *Saturday*. More appearance of truly evil, then in some other things in jealousie branded for Idolatrous: See *Vestigian, Antiq. pag. 10, 11.* & *pa 68, 69, &c.*

(4) *Herthus*, (5) *Sutorum*, & *Boreauim Germanorum Deas*, *persinde* & *oscurum Anglorum*—*qui cum Saxonibus Britanniis nostram applicantes*, *nomen nostratum reliquerunt*. *Cultus* & *immunitas* *Dea* refers *Tacitus*, in *Mor. Germ. Rondigi deinde, & Aviones, & Angli, & Varini*,—*in communem Herthus id est, Terram matram colunt, namque interuenire rebus hominum, in iubus populi arbitrantesur*: *Stonecheng* in Wiltshire thought to have been a Temple to this Goddess, in plain English, *The Earth*: *Vid. Spelm. G. off. pa 350 in Herthus.*

(5) *Vestigian, pa 79, 80*

(6) The Goddess of Hunters and Falconers, worshipped at R:hall in the edge of Rutlandshire, near Stamford: *vid. Canaden. Breton, in Rutlandshire*. Another place of note for like worship whereunto was *Gadman-ham* (in Bede's time *Gadmundingham*) near Beverley in Yorkflire, by the priest thereof *Cyri* profaned and delivered over to Christian worship: *id. pag. 702.* S. Pauls in London was dedicate to Diana; (some Houses adjoyning are called *Dias* & *Chambers* yet.) The Church of Westminster to Apollo, *id. in Middlesex*. God blesse u: that we ever live to fear the return of these Banished, and forgotten Idols to their native homes? Or the removall of what fast kept them out (being banished,) give cause of that Fear?

(7) Or *Oster*: a Goddess giving denomination to the Month of April, called by the Saxons, *Oster-monat*: we yet retain the name of *Easter* thence, hapning usually in that month.

a Christian Saint, have contracted after rust and blemish by the zealous ignorance of times and men; who not contente to overdoe, nor esteeming reverence any thing without worship and adoration, thought the Saint not enough, unlesse he were advanced higher to the name and reputation of a *Divm*, or petty-God, and so partaking now in nearnesse of kinde as well as name with his Sovereign, must not war any longer about the footsteps of the Throne, but be lifted up to sit higher on some lower seats of honour with his maker; which cast a blemish on the very Purity of heaven and as one said, made the Christian world begin to be ashamed of nothing more then of her Saints, which were indeed the honour and glory of the world.

But howsoever the work was gracious and glorious, & wonderfull influence to the piety of all following times, such as may speak it self accessory to much of the practised publick Worship that hath been exercised ever since to Christ his honour, in our land, and hardly to be paralleled by any at of equal dimensions, save perhaps the contrary work of darkness, (if mens covetousnesse should be so far hearkened to, in with-drawing this support in order and preparation to the

(1) Which they  
ma. have from  
the Motaical law,  
*Selden. Hist. of*  
*Tythes c. 3. sect. ult.*  
*Ioan. Baptista*  
*Alfagon who had*  
*been a Mahome-*  
*tan priest, fayes,*  
*'tis one of the*  
*great sins*  
*whereof the two*  
*inquisitor An-*  
*gels examine*  
*fouls after death,*  
*Whether they*  
*have paid Tythes*  
*duly? [Pages.*  
*Herefore, in the*  
*Postscript*  
*The dreadfull*  
*manner is set*  
*forthby M. P. r.*  
*ch. 3. lib. 3. cap. 12.*  
*p. 304. Edi. 1614*

we had before Tythes were paid, *Twisco, Woden, Thor, Freá, &c.* or if these be forgot, taking up that is neare hand and known, the sensuall dreams of *Mahomet*, (though such (1) worshippers pay their Tythes duly,) or indeed no one can foresee probably what. And if these be not the dreames of some troubled minde, but the sober and well-advised thoughts of one jealous for the honour of *His God*, not the melancholick muses of some distempered fancy, but the calm and well-composed serious consultations of one tenderly carefull, and tremblingly fearfull about the honour of *his beleaved Saviour and Redeemer*, prudently casting what may be, yet providently fore-casting it may not be, and yet but reasonably doubting too what is like to be; grounded onely on rationall conjectures, and accompanied with manly feares, lest *Christ* his name should be wiped off from the earth, *His honour disparag'd*, *His worship undermined*,

*His* faith destroyed, and *Himself* forgotten where he hath been worshipped for a God ; It would then be thought on again and again by all those who pretending to worship Christ can think of undoing his Ministers, and in(or with)love of the Master, give themselves leave to doubt whether they may strip of their Own his Servants that doe his Publick work, leaving Religion as naked as in the day she was born here, to be covered by meer Charity of the Parish, or provided for by some slack and slender weekly allowance : And (then which cannot come a worse mischief) intrusting the Religion of the most High God, and its stability, to the tottering contributions of fickle Men, who if they be of one minde to day, may be of another to morrow ; what now they love, then loathing ; and always esteeming their wealth dearly, cannot but be continually loth to part with what they love : (which if it should be, O Jesu. (As Joshua fometime threw up complaint to heaven upon a pang of zeal, in like danger,) *What shall be then done to thy Great Name !*) But ere this be, more stones must be stirred, 'tis like, then we are aware of, or are yet thought on for motion : intwisted estates doe not use to decay single ; nor that sink alone of it self, that settles on the same floor or bottom with others : The strength of property it self must grow weak, ere these dues can be shaken, and the owner of the nine parts be left little enough by the Same reason, (unless by arbitrary disposition, because 'tis fit he should have it,) before This Tenth settled with them, and by equal strength of right can be taken away. Think of ransacking the Tenth rafter out of the roof, or the Tenth stone out of the foundation, and then compare and Judg. But think withall, that rafter, that stone was there placed in *Swithunes* dayes.

70.7.9.



## C H A P. X I.

(1) Item non valit  
Donatio nisi sub-  
sequatur Traditio,  
quia non  
transfertur per  
homagium res  
data, nec per  
chartam vel in-  
strumentorum  
concedionem,  
quamvis in pub-  
lico fuerint reci-  
tata. Bracton de  
aquir. rerum dom. cap. 18 fol. 7.

(2) Videndum est primò quid sit Traditio: Et est Traditio de re corporali propria vel aliena, de persona in personam, de manu propria vel aliena, (sicut procuratori, dum tamen de voluntate Domini) in alterius manum gratuita translatio. Et nihil aliud est Traditio in uno teniu, nisi in possessionem ductio. id. ibid. Sct. 2. vid. Flas. lib. 3. cap. 15. Sct. 4.

(3) De re corporali dicitur, quod res in corporalibus non patitur traditionem. sicut ipsum jus, quod nulli sive corpori inheret: et quia non possunt res incorporales possideri, sed quasi, ideo traditionem non patiuntur sed quasi, nec adquiruntur nec retinuntur nisi per patientiam et usum. Bracton supra fol. 39.

Iura sicutem, eun sunt incorporealibus, videri non poterunt, nec tangi, et ideo traditionem non patiuntur, sicut res corporales. id. cap. 23. Sct. 1. fol. 52.

Item acquiruntur nobis temporalia (corporalia *I believe, it should be,*) per traditionem: recentes corporales patiuntur traditionem: iecus vero de incorporealibus, ut sunt iura, advocationes ecclesiasticae, &c. Flas. lib. 3. cap. 23. Sct. fin.

(4) Confirmare  
est enim id quod  
prius inservium  
fuit sicut firma-  
re. id. lib. Eod.  
cap. 14 fol. 5.

Tradition is here therefore set aside, in other cases necessary, and this Guift being perfect without it, our next must be of Ratification or Confirmation, under which head march all the following allegations to our times, to (4) strengthen the frame that is now built, and inforce from time to time *to part with and give out* what was here set aside and appointed to be given; What those acts in law are shall

shall  
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ft um  
(8)

rin, cu  
Bracto

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Reli  
as ou  
in F  
worl  
nes;  
bitat  
ny,  
each  
Ana  
pbir  
back  
pron  
laws

## of TYTHES.

81

shall not prviously take up much inquiry from (5) *Hussey*,  
nian or (5) *Westminster*, I content my self with their (7)  
general nature, to settle what has been (8) placed; *Ratam  
ratam haberi*, that that which is, they do, as the (9) word  
is, Confirme.

(5) *Vid. F. Ratam  
ratam haberi, & de  
ratihabitione lib.*  
AG 111,8.

(6) *Vid. Cook. Inst.  
1. ex Litterar. s.  
fol. 515. fol. 295.*

(7) *Generaliter  
est. Etus ratihab-*

bitionis est, ut voluntatem nostram declareremus, & negotiorum, quod aliqui ad nos nihil pertinere, nos  
stum faciamus. *Cabi. Lex c. Iurisprud. pa. 789.*

(8) *Ratihabitiis est consensu, qui negotiorum perfectum insequitur: Id. ib.*  
*Rati enim habitio ad confirmationem prioris postulati pertinet: F. de bonorum posse ob-  
nibus: l. Quotiens.*

(9) *Videndum est igitur quid sit Confirmatio: & est confirmatio prioris juris & domini adcepit firma-  
rio, cum prima firmitate donationis; nihil enim novi attribuit, sed jus vetus consolidat & confirmat:*  
*Braaten. lib. 2. cap. 25. fol. 2. fol. 38.*

Men, no doubt, were loth to part with their own, to weaken their worldly estates, though it were to stablish the Religion of the most high God, *to make them baggs* which as our Saviour (1) says *wax not old*, to (2) *lay up treasure in Heaven* (3) *ἀποθνήσκειν εἰς τὸ μέλλον*, for another world, and *to make* (4) *friends of this Mammon of unrighteousness, that when need is, they may receive into everlasting habi-  
tations*: This made the lawes frequent, the repetitions many, the reinforcement earnest, the transgression penal, and each continued in and through every age; that so, if might be, *Ananias* might be met with at every turn, and his wife *Sapphira* kept back that neither should venture again to pluck back what onely true piety and the love and fear of God had prompted them at first to give forth. And now behold the laws are not to pay, but be punished if men paid not.

1) *Luke 19.33.*  
2) *Math. 6.20.*  
*Cap. 19.21.*

3) *1 Tim. 6.19.*

4) *L. & 10.6.*  
*Sermone etiam  
admonemur di-  
vino, terrenis  
coletia, & ca-  
ducis his nostris  
eterna illa pro-  
mereri: Athes. 8.  
in prefat. ad leg.  
Speaking of lykies.*

M

CHAP.



## C H A P. XII.

**T**He first that occurs, (in time and so in our order) is that of *K. Alfred* and is in the preface to his laws, (remember we are now in the dawning of the common-law, and this allowance shall grow up with it,) which, before, he out of modesty acknowledged to borrow from the tables of his Ancestors; and speaks in brief, thus: (1) *Thy tything pone, or thy tythes give thou to God.* If any did not, it was atter agreed between (2) him and *Guthrun the Dane*, that a stranger should pay *lablste*, that is, as 'tis commonly interpreted, twelve Ores, and the English his forfeiture, <sup>as with</sup> with out this, no peace: which League and Law was after confirmed by (3) *K. Edward* (*Alfred's son*) and the same *Guthrun*, and oftentimes after repeated and established the common profit of the Kingdom.

*K. Athelstane* is after very earnest about the year 930 by all that is sacred (4) conjuring al under his Jurisdiction top all: tam vivorum animalium, quam annuorum terra prouinciarum decimas, both of Cattle and fruit: His Aldermen and Reves he commands to do the same, and seriously advises to consider what *Jacob* vowed, my tythes and peace-offering will I offer unto thee, and what is elsewhere with severity enough; If we will not give the tenth, the nine other parts may be taken away, and nothing left but the Tenth. Remember he was not a Church-man but a King, and so spake no doubt as seeing expediency enough of what he spake thus and for his people.

3) *Hecca sunt  
senatusconculca  
ac infatu'a, quae  
primo Alfredus  
& Guthorun re-  
ges, deinde Ed-  
wardus & Gu-  
thrunus reges,  
illis ipsis tempo-  
ribus tulere cum  
pacis feedus Daci  
& Angli ferie-  
runt, ac sele mu-  
tuo amplexi sunt,  
(a part of the foder  
that combined  
them together was  
a law of Tythes,  
which they agreed  
both for labay-)  
quaque postea à  
sapientibus reci-  
tata expius, atque  
ad communem regni utilitatem aucta, atq[ue] amplificata sunt: vid. factus Edovardi & Guthoruni apud Lumb. Arch. p. 41. et Spalm. Concil. p. 390. & 391.*

4) *Leg. Eccles. v. Ethelstani apud cund. p. 403. c. I. Lombard. Archaison. p. 45. & Fox. Ab. and Mon. lib. 3. p. 149.*

*Edmund*

Edmond his successor followed him, and (1) in a frequent Synod held at London about the yeer 944. as well of Lay as Ecclesiastical persons, ( a Micelne Synod it was, a Parliament, no doubt) chargeth every *Christen man to pay bis tythes duly, and upon his Christendom.* I omitted an Ecclesiastical Constitution made by (2) Odo Arch-bishop of Canterbury about these times, because it may be judged not binding; not doubting yet the common law, as then, to consist of such rules, (as they were after, of the Consistory) as well as the secular: For if this were not, there should have been no rule brought along with the Ecclesiastical Judge, for him to Judge by. 'Tis known how till the Conquerors days, when the Courts were parted, This Supervisor sate in the County Court, (as over a Provincial Presbytery,) to Judge with the Kings Reve, or the Reve of the Shire, or Shire-Reve (since Sheriffe,) the one to see Gods right done, as the other to see the Worlds; and what could be more expedient then that they should bring their several rules along with them, the Church-man his Canons to rule there in fitting things, as the other his secular lawes? So that till the jurisdictions were parted, I doubt not to think without hesitation, this and such Canons, The Canon in general, was a part of the Common-County law, and so used, and after digested into a form by it self for the Consistory; whereto adding the way of tryal, &c. according to the Civil law, by citation, proctor, libel, &c. and such after superinducements, made the Court, as it was late found and left: But this by the way.

(1) Leg Edmundi  
Et Lamb Arch.  
pa 57. cap. 2. Spel'  
man Enc. ad. an.  
944 pag. 4:0.  
cap. 2.

(2) Decimo capi-  
tulo mandamus,  
& fideliter obse-  
cramus, de de-  
cimis dandis,  
sic in lege scri-  
ptum est: De-  
cimam partem  
ex omnibus frus-  
tibus, &c. ibid  
an. 943. p. 418.  
cap. 10.



## C H A P. XIII.

(1) Lamb. Arch. p. 62. 103. Spelman. Concil. ad ann. 967. pa. 444.

(2) Nosti, erga  
Dei sunt cuncta  
qua percipiis, &  
de suo non ac-  
commoda, rectum  
omnium condi-  
torum? non egere  
Dominas tuas,  
non primum po-  
stulat te hono-  
rem, non de tuo  
aliquid exigit  
quod refundas.  
Primitias rectam  
& decimas dig-  
natur petere, &  
segas avare.  
Quid faceres, si  
novem partibus

sibi sumptis tibi decimam reliquissis? Quid certè jam factum est, cum messis tua pluvia cum subest  
benedictione jejuna defecit, & vendemiam tuam aur granda percussit, aut pruina decoxit. Quid me  
supputas? Novent bi partes retracta sunt, quia deciman dare nolueris. Constat quidem quod  
non dederis, sed tamen Deus exigit. Hac enim est Domini iustissima consuetudo, ut si tu illi decimam  
non dederis, tu ad decimam revoceris. — Dabis impio militi, quid non vis dare facie do? Aug. 13  
219. de temp. 10. 10. pa. 370.

(3) Leg. Canut. Lombard. Arch. pa. 101. fol. 8. Spelman. Concil. ad ann. 1032. pa. 544 cap. 8. & M  
563 cap. 15.

(4) Leg. Hen. 1. apud Lombard. pag. 182. cap. 11.

Something of the Church intercurses more about this time  
which, from the nature of the thing, it may be expedient to

to name; as an Ecclesiastical Constitution made under the same Edgar, That (1) *the people should be taught to pay to God that which of Right they ought,* (which mark was Then a Right, whether Humane or Divine, I inquire not; If this, it was the stronger; if but that, 'tis it I contend for: but a Right:) as *Tythes and other things:* And another calculated for the Northerne Latitude, (for the collection is stiled, (2) *Leges Presbyterorum Northumbrenium*) and bound up with K. Edgars lawes, where is penalty for every of the Kings Thanes (or lords) that detaynes, ten half markes; for every land-owner six; for every Ceorle or Husband-man twelve Ores: And another written by *Ælfrike* (3) to *Wulfine* of the same general nature, thought not unworthy to be preserved among the undoubted montiments of that Age: All which I yet so slightly pass over, as that my judgment remaines the same both one way and other as before; and for what was stamp'd with the authority of the Church, that it had no doubt the Countenance of the Sate, to be then a ruling part of the Common All-ruling Law; which consisted both of Canon and Statute, (as they were after Called,) and each was a rule for what they did concern in the same Court, where both Jurisdictions were then Combined, and both their Lawes executed.

(1) *Dicimus ei-*  
*am, ut Sacerdotes*  
*populi instruant,*  
*de his que iure*  
*Deo sunt red-*  
*denda: docim-*  
*scilicet, & res*  
*alia, &c. Canones*  
*dati sub Edgario*  
*apud Lombardos.*  
*pa. 71. Can. 54.*  
*Opus. ad an. 967.*  
*pag. 154.*

(2) *Si decimas*  
*qui thanus est*  
*regis detin. erit,*  
*10 pendas to semi-*  
*marcas, possib[er]e*  
*prædiuum 6, &*  
*Cyllicus seu Pa-*  
*gaetus 12. idem.*  
*id. pag. 502.*

(3) *Ælfrike Can.*  
*ib. 1. 578. 2d. 24.*  
*& Lamb. pa. 132.*

## CHAP. XIV.

The next Century gives us the (4) Parliament of *Ænham*, (4) *Concilium* made up of both States, as well Church as Peers under King *Ethelred:* in the contraction whereof is commanded, that, (5) *Gods dues be paid yearly, Tythe of young at Whit-*  
*sunside, of fruits at Allhallondtide:* but in the larger latine,

*Ænham de gen-*  
*erale, seu Par-*  
*liamentum hor-*  
*tatu Ælfragi*  
*Dorobenensis &*  
*Wulfani Ebora-*  
*ensis. A chipe-*

*fulum, ab Ethelredo Rege et aliis, accessitq. Episcopis, & universis Anglorum opinariatis, in die*  
*S. Pentecostes celebra um. Circa an. 1009. Sec. m. p. 510.*

(5) *Iura Deo debita unius per annatum recte pendito, &c. Id. p. 517. K. 10.*

and

(1) *Id. pag. 527.*  
cap. x.

(1) *Sulh, vel potius Sullow (verbo paulum immutato;) plurimis in locis etiam nunc aracrum significat; almetis notoris est significatio eius quam ut interpretari indiget illo. Ego ne legisse memini in vetustissimo quodam legum Ethelredi Regis libello impositum tunc tempore suis in singula area Denarium unum. Ea foras se pensio est quam illi Sulh metes appellabant Glosso. ad Lawbard. Arel. pa. 217. in vacab. Arationis etimo-syna.*

(1) *Dubitaverit forte quipia, &c. Spelun. pa. 529.*

(1) *Before what before: Quodam tempore contigit*

*ut Regis Ethelredi editio concrepante, Archipresulumque Alfeagi & Wulfrani hortatu instigata, universi Anglorum optimates Dia sancto Pentecostes ad locum ab indigenis Eanham nominatum, ac sunt convenire: Id. pa. 525. And in the close: Hac itaque legalia statuta vel decreta in nostro ventu Synodali à Rege N. magnopere edita cuncti tunc temporis optimates te obliuviatores fidei spondebant: 16 pag. 529.*

(5) *Sc. as Whitsuntide, at K. Edmundus nam as Easter: In quibus celebrariibus, (sicuti & in illa Nativitate Domini nostri) convocare Reges, ex antiqua consuetudine, soliti erant proceres suis utriusque Ordinis ad fastum Regium adorandum, & Confilia regni ineunda, quod latius alibi declaravimus: id. p. 539. & p. 560. K. Berulphs before as Easter 3 (and a very Parliament:) id. p. 344. Ex more eius & obsequio vinculo antiquo illico tenebantur proceres in tribus maximis festi vitibus; Christi & Natalitiae, sancti Pachaties, & Pentecostes, Regi annuatim adesse, cum ad Curiam & peritos ipsius exaudendum, tum at consulendum de negotiis regni, statuendisque prout fuerat necessarium. Prodire igitur diebus illis Rex solebat coronam redimitus, & pro Fastu Regio se in omniibus exhibere: donec mons labefactavit Henricus 2. &c. Id. p. 347.*

*K. Knuts great Council at Winchester, was after as Midswinter tide, or in Natalitiae Domini nostri id. p. 539. & p. 560. K. Berulphs before as Easter 3 (and a very Parliament:) id. p. 344. Ex more eius & obsequio vinculo antiquo illico tenebantur proceres in tribus maximis festi vitibus; Christi & Natalitiae, sancti Pachaties, & Pentecostes, Regi annuatim adesse, cum ad Curiam & peritos ipsius exaudendum, tum at consulendum de negotiis regni, statuendisque prout fuerat necessarium. Prodire igitur in diebus illis Rex solebat coronam redimitus, & pro Fastu Regio se in omniibus exhibere: donec mons labefactavit Henricus 2. &c. Id. p. 347.*

In the same Kings time was also another general meeting at *Habam*; *Hec instituerunt Ethelredus et sapientes ejus apud Habam*, is the title, and part of the text (from the (1) Abbot of *Jorneaux*,) thus :

(2) *Let every Thane (or lord) Tithe all that he hath: And (3) we command that every man upon his love to God and all Saints give his Church Scot and true tythe, as in the dayes of our ancestors, (it was no new usage, then, but inherited from the days before) that is, his tenth Acre, as the plough shall goe: and let every custome be made good, super amicitiam Dei, for Gods love to the Mother Church to Whom it belongeth, and let no one take from God (mark the weighty engagements still) that which belongs to God, and our Predecessors (again) granted.*

antecessorum nostrorum quando melius fecit; hoc est, sicut atratum peragabit decimam acram: Et eamis constituto rediatur super amicitiam Dei ad matrem Ecclesiam cui adiaceat, & nemo auferat Deo quod ad Deum pertinet, & praedecessores nostri concesserunt: pag. 531 ea 4.

(1) *Histor. Iornal.*  
fol. 65, apud Seld.  
de decim: p. 225.  
Since Published by  
Spelman: Consil.  
circa Ann. 1013.  
V 531.

(2) *Omnis Thani  
mus decimet eos  
tum quod habet.  
Ib. c. 1.*

(3) *Et pricipi-  
mus, ut omnis  
homo super d. le.  
etionem Dei &  
• omnium lancto-  
rum dei Crysce-  
atum, & rectam  
decimam suam,  
sicut in diebus*

## C H A P. XV.

**B**ut none did more in this kinde then the Conquering Dane. First, he (4) sends from *Rome*, mindful of Justice here, to all his Officers and Ministers, threatening if all dues were not paid, particularly *Tythes*, the disobedient should smart from the sharpest edge of his severest laws. Secondly, when he came, (*Nec dicto fuit deterius factum*, as saith the Historian) he caused all the (5) ancient laws to be revised, especially those of his Predecessor *Ethelred*, (amongst which were for tythes, as may be remembred from but now.) and Thirdly, (6) by more assurance and past all conjecture he re-

intimatione regie multas perpetuis temporibus obsecvari præcipit. *Malo sibi de Ges. Reg.*  
ib 2. cap. 11.

(6) *Quotanais quisq; Deo jura justaque debitones ritè perfolvi: Arationis qui'dem elençosynam  
ad decimum inquit in Paithare diem pendit: factum decimas ad Pentecosten solvito: terra denique:  
tudum decimas rediuto ad festum omnium sanctorum celebiter: Orifnot, ait laud. Vid L. Eccles. Canus.  
K. 8. Spelm. p. 544 &c. 15. p. 545. De decimis ad Ecclesiam Thani pertinentibus, vid. c. 11. p. 545.*

vived.

(4) *Vid. Epistola  
Canuti Re-  
gis ad Anglorum  
proces anno  
Regni sui 15.  
Dominii nostri  
1013. in cod.  
pag. 535.*

(5) *Omnis enim  
leges ab antiquis  
regibus & in xi-  
mè ab anteci-  
pore suo Ethel-  
redo lacas, sub*

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(1) *Wombe be-*  
*fe, p. pag. 84.*

vived & awakened that notable past law of K. (1) *Edgar*, made up of 3 parts twisted together for mutual strength, *Rule, Punishment, & order for Execution*; willing that men should pay if they did not, they should lose 9 of 10. And who should feethings done, but they who by their work were to be rewarded for their labour? Which was much, and as much as could be expected, in tender regard to what (of that little account is,) findes so much place, and in very fast and safe accordanc to what had been before. Indeed it should be so: State should be constant. Not uncertainly whiffing up in loose an various decrees, but be gravely stayed and fixed to their received orders, Not giving the world occasion to think the Laws are Humane Ordinances by this, That they change like men; but partaking in stedfastnes with him from whom the are, resemble Him in Immutability who is the Same for Ever. Justice and Truth are never but the same; Why should the their Rules vary? The same thing cannot be right and wron at times; why should the Lesbian rule warp hither and thither as 'twere to say it is! It may make the jealous world suspe ere long that Lawes are nothing else but witty devices to serve the contrivers own turn, if, like the sayles of a ship they may be shifted and turned hither and thither upon occ sion: and cause them wish perhaps rather they had no ordnance at all, then what may be planted against their own saf ty; finding suspicion in the sanctuary of their refuge, and doubting what was given for their wealth may prove an occasio of their falling. The firmness of a publick dec could never have found a fitter measure then that of the *Laws of the Medes and Persians* which alter not; where the world owes much of its happiness: nor can we ever hope for any more certainty of any thing we possies and call good on earth; then there is of Justice; and the rule and measur thereof is the constant Law.

Dan. 6. 8, 12, 15.

This the wise and victorious *Dane* knew, (perhaps by cherishing such axiomes and persuasions at home victorious which made him strike in as much as might be with the pu and established Laws, to shake the Kingdom the less by Conquest, and in their stability to provide for much of the whole,

wholes, and his own. As indeed this course often leaves a Kingdom safe with change of the head, and Government quiet upon any change of Governours. For the person at top is never so material as the diffused and coinorporate Law throughout the body politick, which settles down and is conveyed, as the branching Nerves, into every the remotest member of the re-publike, and which if it suffer trouble by change, many a paralytical or spasmatrical fit cannot but must needs go therewith, disordering the whole, and twinging the very heart ; if these are forced out of the way, or suffer any considerable distention, laxation, mutation, obstruction, trouble or disturbance whatsoever ; which also the next Norman Conquerour found or was taught ; for the Nation that was in part willing (or were forced) to receive him, would never yet give consent that their laws (the sinews of the State) should be touched, which put him upon this hard Dilemma either to imbrace These, or be rejected by Those, to let Them alone, or Himself never should have been quiet.

## C H A P. XVI.



UR next step (the last on that side the Conquest,) is to Edward, surnamed the Confessor ; That blest man was blest indeed to be the Authour or instrument of much good to this indeared Nation. He first obtained help of God to remove and dispel that coarctation of tough humours about the throat, (*Strume*, the Physician calls them, and since from this accident of their cure, *The Kings Evil* :) And, which was the greater miracle, obtained also the like wonder working power to be left inheritable by all his successors. He raised that stately and magnificent pile at *Westminster*, a Monument not onely of his own piety but also a repository of the Monuments of Nobles and Kings

## The Civill Right

Kings ever since , who quietly sleep in that dormitory he nedid and consecrated to this use fromagan superstition and under his roof have found ever since their peaceable, safe and everlasting habitations : He was so zealous and successfull for Justice , that when he was gone, the most people desired was but right his way ; And as Ziscaes Drum, (he being dead) charmed the enemy to obedience or flight ; so the Concessions of his Laws stilled their mutinyes often, whence, at the importunity too , they have been continued in the Coronation oath ever since. Lastly, his prudence discovered or acted self chiefly in this , that , (treading in the steps of K. Kne before,) he dreaded exceedingly all perillous innovation and whatever wit or passion might suggest to the contrarie knew it was safest always hearkning to reason and going the way had been trodden ; and therefore adhered to the rule by choice , that whatever others did , He would only wifie in the way of his Ancestors. To this purpose he caused to be searched, and by his authority reinforced the good old Laws of the Land , which , whatsoever forward men might deem to the contrary , is still likeliest to be the readiest way to mens great desires of Happiness, Wealth, and Peace. If Justice be the preserver of order, that the parent of peace whence wealth & riches follow : to disturb the Law the foundation and rule of Justice , can be no less then to trouble the pure fountain whence those precious streams must issue whereas to keep that fast, is to hold the foundation firm whereon all the rest either are or may be built. He then began not , but continued and confirmed this following order for tythes,

### CAP. 8.

*De decimis ecclesia reddendis, de ovibus et porcellis.*

*De omni annona decima garba Deo debita est et ideo reddenda. Et si quis gregem equarum habuerit, pullum reddat decimum : qui unam tantum vel duas habuerit, de singulis puluis singulis*

Of all Corn the Tenth sheafe is due to God, and so to be paid, &c. But the English hereof was given before, pag. 63.

los denarios : similiter qui vaccas plures habuerit , decimum vitulum : qui unam vel duas, de vitulis singulis obolos singulos. Et qui caseum fecerit, det Deo decimum : Si vero non fecerit, lac decimo die. Similiter agnum decimum, vellus decimum, caseum decimum, butyrum decimum, porcellum decimum.

## De Apibus.

CAP. 9.

*De apibus vero similiter decima commodi. Quin et de bosco, de prato, et aquis, et molendinis, porcis, vivariis, pisca-riis, virgultis, & hortis, et negotiationibus, et omnibus rebus quas dederit Dominus, decima pars ei reddenda est qui novem partes simul cum decima largitur. Qui eam detinuerit per Justiciam Episcopi et Regis (si necesse fuerit) ad redi-tionem arguatur : (perhaps righter, adigatur.) Hac enim predicavit Beatus Augustinus, et concessa sunt a Rege, Baroniis et populo. Sed postea instinctu Diaboli multi eam deti-nuerunt, et Sacerdotes locupletes negligentes non curabant ini-re laborem ad perquirendas eas, eò quod sufficienter habebant sue vita necessaria, &c. Leg. Edward. Regis. apud Lambard. Archaios. pa. 139. & Spelman. Concil. pag. 620.*

Behold here a plaine law : as full as if it had been made in Consistory, as clear as evident and open words could express, as authoritative as might proceed from the King and his people, and as much to be reverenced as King S. Edwards Law : consenting much to what went before, and for what followed after, we know (and shall be made appear) has had as many after, successive, supreme confirmations as any publick act of this State ever had : Except the great Charter : nay, not except the great Charter ; into whose confirmation this was also by implication involved, and with it had life, strength, and fruit, even to the Petition of Right, as shall be hereafter shwon.

It usually passes that this devout and wonder-working King was the father of the Common-Law, (which if, we see what shined from its morning beames,) and that he gave it first life and being of no præexistent materials, as I beleieve he did, as it was common : for he, (a little to slep aside,) disliking the several ways of tryal that had been to his time,

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That one shoulde be tryed by (1) *Saxon-Lage*, another by *Dane-Lage*, a third after the *Mercian*: one punished by (2) *gildwite*, another by *lawfite*; neighbours, for the same offences, several ways, Amassed all both precept and penalty together under one general rule, and from the composition indifferency, & use called the result by a fitting name (relating to whence it had come) *thesow* (3) *Common-Law*: not but that the parts had been before, but he collected and imbodyed them thus, and from the composition and derivation gave this name. Just as the famous *Justinian* before, by help of *Tribonian*, *Constantine*, *Theophilus*, and others, winned the great (4) heaps of the former *Romane Civil-Law* and of the near two thousand volumnes that had been 1400. (5)

(1) *Caniani*  
sunt aliquando  
habuerunt leges,  
sed c. cunctibus iiii  
& *Saxopibus* omni-  
bus sub West-  
*Saxonum* dia-  
tione, horum lege  
vivunt. Anglie le-  
ges sunt (quam  
vocant) *Mercia*  
donec invenerit  
Dani East An-  
glie & Northum-  
brie provincias,  
sunt inde  
confutudines, à  
prioribus non in compluribus discrepantes. Hinc majoribus nostris triplex legum disting-  
uisit *Teaxna-laga*, *Wypena-laga*, & *Dene-laga*, id est, iuxta Occiduum Saxonum,  
*Lex Merciorum*, & *Lex Danorum*. *Spelman. Glossar.* pag. 445. in vocab. *Lex Anglorum*.

(2) *Several punishments or forfeitures for the same offence, among severall here then living Nations. The former was the English mans, the other Danes: (13 Ores, I finde it guessed.)* *Vid. Glossar. ad Lasc. Archon. p. ult. Selden of Tithes, cap.8 sect.10 Spelman. Gloss. pag. 423. & Fedus Edowardi & Guth. apud Lamb. Arch. c. 3 & 6 pa. 42. And compare with them Spelm. Gloss. in vocab. Englorum, pa. 231.*

(3) *Pot Aluredum* suas prouunt leges *Edowardus senior. Ethelstanus, Edmundus, Edgarus, Ethelredus Saxones, & Canthus Danus, generales plenius singulis quoad prohibitionis Canonem, sed in irragandis multis Danos resipientes juxta coniunctionem Danicam (quam Latine vocant) Anglos iuxta Angli can: & Mercios interdum juxta Mercianam.* Noluit vero Rex *Edowardus Confessor* in uno regno triplicem hanc iustitiae lacentem, sed recensens denudo Anglorum, Danorum, & Merciorum leges, unum dedit parem omnibus, & Communem, qua à Re, *Lex Communis*; ab Author, *Lex Sancti Edovardi nuncupata est.* *Ranalph. Cestensis:* Ex tribus his legibus (inquit) *Sanctus Edwardus tenuit unam legem Communem edidit, qua Leges Edwardi usque hodie vocantur. Spelman. Gloss. pag. 436 in vocab. *Lex Anglorum.* Though Gervase of Tilbury refer the work to a little after as done by the Conqueror. Porro liber de quo queris filii Regis individuus est comes. (that is, Donus Dei Book: ) Hujus autem institutionis causam ab Henrico quondam Wintonensi Episcopo (as to the Conqueror's daughter) sic accepi. Cum infigas Anglia subactor Rex *Wilhelmus*, ejusdem Pontificis sanguinis propinquus ulteriores Insulae fines sujicte sunt imperio, & rebellium mentis terribilium per dominum exemplis. Ne libera de exercitu d. rector erroris facultas, decretiv subiecti fibi populum iuri scipto legibulque subiecere. Propositis igitur legibus Anglicanis secundum triplicem earum distinctionem, hoc est, *Merchen-lage*, *Dene-lage*, *West Sexen-lage*, quadam reprobavit, quiaq[ue] autem reprobans, transmarinas Neuftrix leges, que ad regni pacem tuendam efficacissim ne videbantur, adjectit. *Glossar. ad Lombard. Arch. pa. 2-9. in vocab. Ius Danorum.* Agreed on substance for the Originals, Dissertation, and composition of these Laws, though the circumstances a little vary.*

(4) *Sed cum omnia perceperat, à prefato viro excuso (Triboniano) fuissestum est, duo pené mīla librorum esse conscripta & plusquam trecentes decem milia vestiunt à Veteribus effusa, que necesse esset omnia & legere, & perserutari, & ex his, si quid optimum fuisset, et gen. De Confirmat. D gest. in Princ.*

(5) *Erat enim mirabile Romanam Sanctionem ab urbe condita usque ad nostri Imperii tempora que penē in mille & quadragesitos annos concurrit — — — in unam redescere consonantiam, ut nihil negat contrarium, neque idem, neque simile in ea inventatur, & negemus leges pro sebus singulis posse aliquam apparet. Ibid.*

years

years a laying together, sifted out some little for his use, that greed with the Genius of his time and affairs, calling the Collection, his *New Digests* or *Pandects*, a general Receipt, or All-receiving composition; And as was intended, (and in part perfomed) here at the purging of the Canon-Law in the time of Henry the eighth, (upon the striking of the Pope, the Head,) where it seemed good to the then wisdom of the state to limit by the prudent fishermen in the Gospel, who collected and saved the good into vessels, only they cast the bad away: Or as lastly law-makers have almost a law to themselves, to cull out no more then needs they must for rejection, the weeds and refuse; reserving all the good slips, and picking their posie as near as they can of new flowers growing on old stocks formerly planted, and hitherto preserved; so was done here. Our English Justinian (Edward) made his *new Digests* (the Common-Law) out of those as it were *Pratorian Edicts*, *Senatus consulta*, *Decreta Sapientum*, &c. of British, English, Saxon, and Danish pieces which had been before, and was easier to order then to new make, and usurping to himself the power of a father, having digested it into his new forme, called the product his new Common-Law. Whence or from how far came those pieces he thus made use of, would I beleive prove a very hard question and not to be satisfied fully, unles we could recover sundry things utterly lost, *Caput inter nubila condit*, as he said of that river, their original is far among the clouds, and not to be revealed to us in any degree but from the things of *Mulmutius*, *Dunnwallo*, *Qu. Martia* and such other as being thought of nowhere else in the world but here, are yet with us wrapped up under very hard names. Yet for an *Essay*, and because it hath not been attempted purposely by any, for varietyes sake, Take as followeth,

First, for granted, that, as before, the Confessour was but — *Anglicarum legum legitimus restitutor*, as (1) an old book stiles him, the restorer, not the contriver of them; and a little more, that he had them from his Grandfather

*Edgar;*

(1) *Geneticens.*  
*lib. 6. cap. 9.*

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(1) Edgar; from whose time they having been laid asleep (for 68. years) and buried as it were under the spoiles of war, long silenced by the Danish tumults, He, by the advise of his English Barons, revived, awakened, quickned, and gave new life and vigour to their dull and fainting power, and from the office of a friend, Guardian or prot.ctor got him selfe the reputation of an Author, or first Father, setting them towards the state they have in some measure continued in ever since. But we begin not then : He (2) this Edgar, had them quenched from his most noble Antecessor the pious, valiant, and wise Alfred, who what he did was remembered (3) before from Ina, Offa, Ethelbert, &c. to whose tendries he added what seemed fit of the Legislatives of West-Saxony : beyond which, and the farthest our inquiries go, and there they settle must be the King *Mulmutius*, and the Queen *Maria*. These coyned what had after many following inscriptions, and stamping for currant Law, what had been hitherto but prevailing reason, or arbitrary opinion, made that fit draught whereof we have now any remainder extant, as that I beleive with many alterations and Re-Reformation hath continued topical and national to us ever since to the very day. Seemeth this a strange thing ? I invented it not. Good authority hath led or misled me ; take account then from of each distinctly

First, for *Mulmutius*, *Geffry of (4) Monmouth* doth covers of him, That he was one of the first, that having so advenit sicut eam, sed cum prætermissa fuisse, & oblivioni penitus dedita à diebus avi sui Regnari, qui 17 annos regnavit, & qui primus ejus inventor dicitur, utque ad sua tempora, videlicet predicatum est 68 annos post dies ipsius Edgari, ipse Edwardus, iuxta justa erat, & honesta, apud funda abysso extraxit eam, & renovavit, & ut suam observantam contraddidit Leg. Edwardi R. & apud Lombard. Archaison, pa. 139. & vñ. Chron. Verust. Ecclesie Liebfelden. 16. pa. 13 & apud Seldan. ad Eadmer. Histor. pa. 171.

(2) *Tac. Evidence of things I speak thus much to all that are acquainted with the affairs of those times.*  
 (3) *Pag. 56.*

(4) Et cum totam insulam omnino subjagasset, fecit sibi diadema ex auto, insulareque in plurimum statum reduxit. Hic leges quis *Mulmutius* dicebantur inter Britones statuit, quæ usq; ad hec tempore Anglos celebrantur. Staruit si quidem inter exteris, quæ multo tempore post. Et Gildas scripsit ut Tempula Deorum & Civitates talēm dignitatem habent, ut quicunque fugitivus sine Rebus adiutori confugeretur, cum venia coram inimico suo abiret. Staruit etiam ut via quæ ad predicta templū & civitates ducebant, Nec non & arata Colonorum eadem lege confirmarentur. In diebus regni ejus latronum macrōnes cessabant, raptorum levitatis obturabantur, nec erat usquam qui violentiam alicui ingeneret. — In urbe Trinovantio prope templum Concordis sepultus, quod ipse ad confirmationem legum constituerat. Galfred. Norm. Hist. Reg. Brit. lib. 2. cap. 17.

dued the whole nation, rendered himself glorious by the lustre of a golden Crown, and made certain Laws, from him called the *Mulmutian*, which are preserved, (and the Authour lived since the Conquest, in some favour with Robert Duke of Gloucester, King Henrie's son) among the English to this day. *Gildas the Wise* translated them into Latine along time after they were written; a part was; *That Temples and cityes should have priviledge of Sanctuary*, and so the highways leading to them, and the plough, &c. And having reaped much peace, the fruit of his diligence, he was buried in London near the Temple of Love, *quod ipse ad confirmationem legum construxerat*. The late (1) Dr. White of Basingstoke,

(1) *Mulmutius Dunwallio Rex aurea Corona primus usus est, & salutares leges quae Mulmutie dicebantur instituit. Has in Latinum sapiens Oillas, & in Anglicanum*

his credit is ingaged for much the same, adding, that what *Gildas* translated into Latine, *Alfred* did into English to be a rule here, (of whose borrowing from times past we spake before:) and (2) *Ponticus Virunnicus* (living too on this side the Conquest,) ingages they were observed till his days.

sermonem postea Rex Alphredus convertit, adeò ut dñi easdem etiam inter Anglos diligenter obser-  
vatas fuisse coniter. Quarum adiuc se è capita memorantur hec, Vt Dorum templa, &c. Richar-  
du Vitru Basingstoki. Hist. lib. 3 pa 186.

(2) Hic igitur (Dunwallio) est qui primus, &c. Et qui lege; patriz quæ *Mulmutius* dicebantur, instituit inter Britones, quæ usque ad hoc tempus celebrabantur inter Anglos, (*so soon from the Britans to the English they came*) Urbes, Templa fecit, ut qui ad illa fugeret, etiam coram inimico abiire, & via tua effici simili modo, quæ ad Tempia recte ibant, & ad avata col norum: Polteca mortuus est in urbe Trinovantum sepultus juxta templum Concordie. Briton. Hist. lib. 2 in fine.

Thus for the man: Now for the Noble and Masculine Queen *Martia*, the Loyal wife first, and after learned widow of King *Guenteline*, or *Guiteline*, (Remember both He and she lived before either the Conquest, Christianity (here) or Christ's incarnation; *Mulmutius* under the second Monarchy of the Persians about 430. before Christ: and this Qu. *Martia* soon after:) she was (saith the same (3) *Geffry*) both noble and wel learned in the Arts: Among other remarkable things she did, she invented that Law the Britans used under the name of *Marcian*, (and from her no doubt might the Province of Mercia take name, a large tract of Land

legem quam Britones *Martianam* appellaverunt. Hanc etiam Rex *Aluredus* inter ceteras translu-  
tu, & Saxonica lingua Pa Marchie lage vocavit. lib. 3. cap 13.

(3) Erat ei (Guj-  
thelino) Nobilis  
mulier Marcia  
nomine, omnibus  
artibus eruditæ.  
Hac inter multa  
& inaudita, que  
proprio ingenio  
pepererat, inventa-

reach-

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reaching from *Lincolnshire* to the heart of *England* as now and formerly known by this name, as all know that are acquainted at that distance:) which King *Alfred* among other translated, and called *Pa Marchitie lage*, as the pre of *Geffry* hath, but the correcting (1) Manuscript more likely, *Merchenelage*, or *Martian Law*: and (2) *Pont. Virtus* ns, (3) *Matth. Westminster*, and (4) *Dr. White* come into here with their subsidiary assents and confirmations.

(1) In the publick Library of Oxford, in 4 H. 7 Att.  
(2) Histor. Br. t. 1. p. 3.  
(3) Flor. Histor. et 4 cap. 8.

(4)—*Leges optimas à se nominatas, & diutissim posita à Britannis observatas instituit, quædem Rex Aluredus sermone donavit Anglico, ut ante de legibus Malmi iis demostrarimus ea*  
*Vit. lib. 3. pag. 199.*

(5) Chronic. ad  
an. ante nat. Chri.  
442. & ad an. 56  
(6) Histor. Angl.  
lib. 1. pa. 21. 22.

(7) Occurrit in  
Hildeg. mentio  
legis Molnuntia-  
ne & legis Mer-  
cic, alias Marti-  
ane. Illam à  
Molnunto Rege  
Britonum quem  
floruisse assertunt  
anno nondum  
elacentis gratiae,  
450. Hanc à Re-  
gina Martiana  
(Leland. Martia  
Proba.) Guente-  
lini Regis vidua,  
dum infantis fuit  
regnum tueretur  
seruit conditam,  
anno ante Nat.  
Chri. 450. Has  
duas leges (in-  
quit Cellirens.  
sis Monachus,  
hb. 1 cap. 10.)

Gildas Historicus translatis de Britannico in Latinum: & Rex Aluredus postmodum de Latinis Saxonum, quæ Marchene lawa dicebantur. Ipic quaque Aluredus legem Anglicæ conceperat superadjicit, quæ West-Saxeneliga vocabatur. Tandem Danis in hac terra dominianibus testis lo emanavit que Dane-laga dicebatur. Ex his tribus legibus Sandus Edwardus tertius Commune edidit, quæ leges Edwardi sive hodie vocantur. *Spelman. Glossar. pa. 441. in Vocab. Lex Me-  
etorum.*

*William of Malmsbury*, (5) *John Stow*, and (6) *Tob. Virgil*, have the same, or much after the same, And som very like all would take up errore upon trust one after another; But the true pedigree of the Common-Law may, from beyond this (7) *Edward*, derive it self (in som parts at least) thrice as far with shew and probability. S like is that I say else where, *There may be of Laws a Climatical fitness; They thrive best under such an aspect, and will hardly be pruned out: We have Native some things, w theſe Connatural, with other, whence they continued same upon endeavour of removal, and still sprout out again to a kind of immortality. This by the way: Nowt return.*

Whether these things be of certainty enough or not, for the derivation of parts thus far, sure enough what is generally received for the whole, that the Common-Law, as Common-fathers it self on this King and *S. Edward*, as before; He made of severals this one intire Body, wherever he had his pieces; And so in this if we have it, we have not onely *Law*, but to (create sure right in Temporals) *Secular Law*, *Common Law*, this our settled and long continued all-ruling, all-

disposing

disposing Sovereign *Common Law*, and this in the infancy, life, vigour, and most powerful strength, and chief ruling, *Raigning power thereof*; and all this for what many take to be no other then some tyrannical imposition of some latter statute; yes so indeed, we have the morning beames of this *Sovereign light* to quicken to best and strongest most assured Right, *This Right of Tythes*; Let more or as much be shewed for almost any thing in this Kingdom or Commonwealth.

The highest other titles pretend to, or shelter themselves under, is but under the Conquerour; the most goe not so far, and they are thought to ayme at a very great distance that can but look thitherward; Insomuch that it became (1) a doubt long since whether any Plea founded of right beyond, were to be hearkned to? and though the truth seems, it was, and many enjoyed on this side, what they had on the other, and had not forfeited by stubborn opposition; yet an excellent Scholar (*the Aristotle of our Nation*.) and a (2) professed Lawyer, seems to give his opinion to the contrary, *That save Church-lands*, and those in Kent, *all else had their rights drowned in that deluge, and save what was saved by mercy, the rest then perished*: But now behold here not onely a present and ancient title, but founded in the Common Law, and so long since as makes it to have overlived clearly that bloody battel; Planted there in words at length, by the composer himself of that Law, and so fully too as few things else are, and so by consequent, from the very beginning has a fairer, farther, deeper, and more spreading radiation in the infide and body thereof, (as twere clasping in almost to another hemisphere,) then most other lands, tenements, hereditaments, &c. can pretend to. (3) *A tempore coronacionis Regis H. patris Regis E.* was long since a good Plea, From the Coronation of Henry the third. And in (4) *Henry the third's time, from his grandfather*: But here is that overlookes those clearly, double and treble, *From the Conquerour and before*. What can, if this cannot, settle a thing by Law? to have its title thus written by the Founder Himself, in cleare and evident Characters, even in the infan-

(1) *Vid. Seld. of Tythes. Review of Chap. 8.*

(2) *Chancell. Bacon. Of the use of the Law, pa. 23. And see also the Preface to Hen. r. Laws, late forr forth by Sir Roger Twifden, pa 155.*

(3) *Flet 4. 5. 14*  
 (4) *Braston fol. 373.*

cy and the very face of the Common Law.

And here then before we go any farther, let us a little stand stil, and veiw the way we have gone, & what we have gained as 'twere in another world, before & beyond the Norman turn. Sure a Right; a firme Right: a legal, undoubted, publike, Civil Right; as good as any had, as good as any could have, what grant and assurance could make over, and that publike and strongest. What is that we own any thing by but agree-

(1) F. de Legibus  
Senatu que. L.  
Nam & Demost-  
henes.

ment? publike convention! πλευρας δε των Σικηνον Κοινην, as (1) *Marcian* the Civilian spake from *Demosthenes* the Orator! which is that alone parts intercommoners, and is the bottome ebery ones Own rests upon: Now and this stands as full under, as powerfully and vigorously supports these thus apportioned Rights, as any other separate parcels whatsoever, we have made it appear so in thosse days. I look upon the Common Law in a twofold state, of growth, and perfection. 1. As an Embrio preparing to some thing, in rude and imperfect pieces. 2. As a child, like to be a man, formed to a being, and of some present power, and abilities. In each of which we could expect no more to appear for tythes then does; for whether we regard those native and as it were connatural genuine Laws of our Country as having distinct force, or as after amassed together into one community; the Several parts made after into the Common Law, or the Common Law made out of those several parts, still, in All, tythes had a clear full mention and grant, And this to the Baptisme of John, from the beginning of Any Baptisme in this Nation. We have donation, wee have confirmation; wee have Law, we have penalty; we have Thou shalt pay, or, thou shalt be punished if thou do not pay: King Etheldreds Law, King Elfwolds law, King Offaes Law, King Ethelwolphs Law, and also the noble Alureds, the most glorious Founder of our state, and government. King Edmonds Law, King Ethelstanes Law, K. Edgars, Knouis, the Confessors, and whose not beside the Parliament at Enham, & other Parliaments, Princes, Peers, People, Lords, Synods, Senates, What not? and all from as undoubted monuments of truth and assurance, as any the times do affoord: He that will doubt these

these may as well doubt any thing : whether those men were ? whether these Princes raigned ? whether there were an Hetharchy, and the wrangling , wasting, consuming parts did at last coalescere into a mutually preserving Monarchy ? We have but credit of story and record for these, and so for them, and indeed for one part, as well as another.

## C H A P. XVII.

 O M E we next on this side the bloody battel, and Sanguelac conveys us over to no less assurance or clearnes of strength on this side than straigly successful invasion. Non-revocation is first assured : for who ever heard of such a prevailing vote as this since the Conquerors dayes, quickned to life and power, that no tythes should be paid ; Then for positive confirmations we have many : Ever and anon some new sinews of strength having been added to those were before, and repeated assurances of them comming in so thick and plentifully that they had need for their multitude to be sorted into parcels to avoid confusion.

1. And whereas of K. Edwards Laws Tythes were a part, as but now , our first search would be therefore, what notice and allowance is of Them, and Tythes in Them.

2. Next when and how the Consistory was erected , with its lawful powers , the proper scen where these dues had motion and translation both as to stating their right and helping their Recovery.

3. What were the Collateral impressions of state in this interval, chiefly since the beginning of the printed statutes ; as in *Magna Charta, Articuli Cleri, Circumspecte agatis, &c.* to the Petition of Right.

4. What is else abroad of Private stamp , but Publike allowance, as among the great Lawyers , *Cooke, Fleta, Bratton, S. German, Natura Breuium, Book of Entrys, &c.* On each

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each of which heads is like to be found at least something and all hoped will be abundantly enough. In any whereso<sup>t</sup> yet we shall not so much tie ou<sup>s</sup>elves to follow our method as our busines, rather chusing to let our matter lead us, then we forcing it ; and always esteeming our method such a line of our own making, as that the compass thereof we may at any time without offence upon occasion transgresse.

First then to *King Edwards Laws*, renewed, repeated, confirmed, and sworn as they were, (a good part of the accompt that is of those are very ancient being spent in the mention of them,) and some wonder it is to see and consider for some Ages how peoples hearts were not so much bent towards, as set upon, and wedded to them. Fickle men ! that use to love and hate in a breath ; with no more constancy then the winde blowes from such a set point of the Compasse, Now for this, and Then for that ; Yet such was their Immutable and Immortal love to their *Avita Consuetudines*, as they called them, that they would not admit of any divorce from them; the sword of a Conquerour could not terrifie from their embraces, and any restraint for a time did but quicken their appetite & awaken & inrage their thirst to call for them so much the more earnestly after, & indeed undeniably. It was harder to conquer These then the whole Nation besides : The peoples hearts were soon quieted or subdued by one great Battail and a few other : But their affection to these was such, that ever and anon they were up in bloody Insurrections ; They would not be denied their *Laws* upon peril of their *lives*, and still whatsoever bonds of agreement were made, none would hold ; whatsoever peace was agreed on, none would last and be firm, unless These *King Edwards Laws* were the soder and braces as it were to keep all from falling back again to factions and fractious. So in K. *Williams* time, so in Hen. 1. & Hen. 2. So in K. *Johns*, so in others, till they were planted in the Coronation Oath, and there I believe lately they were in the last that was taken.

See of K. *William* first, whose *Laws* bear this title :

The

The (1) Laws of good K.  
Edward which William the  
Bastard afterward confirmed.

(2) The first Chap. After  
the Conquest of England, the  
said William in the 4 year of  
his reign, by the advice of his  
Barons, caused through all the  
shires of England, the Nobles  
and other the (3) Wise-men  
and Lawyers of the Land to  
be summoned, that of them  
He might know what their  
Laws & Customs were: These

being met, twelve of every

shire; and having first taken their Oaths to deal sincerely,  
not turning to the right hand or to the left, adding nothing,  
detracting nothing, changing nothing, began with the  
Church: *Quoniam per eam Rex & Regnum solidum, sub-*  
*sistendi habent fundamentum;* Because this was the Basis  
and firm settle whereon all the Rest was seated, and her  
Laws and Liberties were (they say) as followeth;

2. Let every Clerke and Scholar, and their posses-  
sions wheresoever, have the peace of God and the Church:  
And so on to the eighth Chapter; for every tenth sheaf, tenth  
fole, tenth fleece, &c. as before, which is the (5) particular Law  
we seek for here. That which might occasion this strict Sur-  
vey, may have been, when he saw what was, to superin-  
duce or conjoyn his Norway orders; (6) As well because  
they were his, and he was willing  
to govern by his Own, as because  
they were better and honeste, as he  
pretended; But chiefly for that their  
admission (7) would have removed  
one rub which lay in his way, and  
hindred the evennes of his path to the  
Crown by succession, which was his  
unfitness thereto by reason of his illegitimation; which,

(1) Leges boni Regis Edowardi, quas Gulielmus Ba-  
stardus postea confirmavit.

(2) Post acquisitionem Angliae postatus Rex Anglie  
Gulielmus, quarto anno regni sui, Consilio Baronum suo-  
rum fecit summoniri per universos Angliae Consulatus An-  
glos nobles, sapientes, & lege sua eruditos, ut eorum  
leges, & iura, & consuetudines audiret. Electi igitur de  
singulis totius patris Comitatibus viti duodecim, jureju-  
rando coram Rege primum confirmaverunt, ut quod pos-  
sente recto tramite incenderet, nec ad dextram nec ad fini-  
stram dverentes, legum suarum & consuetudinum sancta  
patetaceerent, nihil praetermittentes, nihil addentes, nihil  
praevaricando mutantes. A Legibus igitur sancte marie Ec-  
clesie fumentes exordium, quoniam per eam Rex & Regnum  
solidum habent subsistendi fundamentum, leges, libertates,  
& pacis ipsius concionatisum, dicentes.

(3) Omnis Clericus, &c. *Lambard. Arch. pa. 138. Spel-*  
*man. Concil. pa. 619.*

(4) See M. Seldens Review of Chas. Of Tythes, pa. 982.

(5) And the  
same limb is also  
of the same body,  
but under another  
head, as if the  
whole composition  
were Glanvils,  
in Hoveden. An-  
nal part, post pa.  
600.

(6) Proferebat enim quod antecesso es ejus,  
& omnium Baronum serè Normannorum, Nor-  
wegiensis existent, & quod de Norvegia op-  
lim ventissent. Et hac autoritate leges eorum  
cum profundiore & honestiores omnibus alii  
essent, præ certis regni sui lezibus asserebat se  
debere sequi, & observare. *Lambard. ibi s. præp.  
149. & Vid. Spelman. Goffar pa. 416. & Chon.  
Lichfeld. apud Lambard. pa. 158.*

(7) Selden. *ib. pa. 484.*

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as Laws were here under the Church, scarce left him in succeeding condition (to his Cousen Edward, for he betred not meerly by Conquest,) whereas the Northernw in this regard more pliable and favourable. But when

(1) Quo audito moris universi compatriot<sup>x</sup>  
Regni qui leges edixerant, vixisse effecti, una-  
nimiter deprecari sunt, quatenus permetteret sibi  
leges proprias, & consuetudines antiquas habere  
in quibus vixerant patres eorum, & ipsi in eis na-  
ti & nutriti sunt, quia durum valde ficeret sibi su-  
cipere leges ignocas, & judicare de eis quas ne-  
sciebant. Rege vero ad flectendum ingratu exi-  
stente, tandem cum prosequuntur sunt deprecantes,  
quatenus per animam Regis Edwardi, qui sibi  
post diem suum concesserat coronam & regnum,  
& cujus erant leges, &c. *Lambard. Vbi Supra.*

the people heard hereof, their m  
was up presently, their swords  
their sides, and spears in their hand  
beseeching they might not be rid  
by they knew not what; and when  
denyed, reinforced their bold  
quests, conjuring him by S. Edwa  
soul, who left him the Kingdom, (u  
this was a part of his title, glan  
at before,) and whose the so m  
desired Laws Were, that he would not force a yoke on th  
they were not able to bear, and like to gall their neck  
much the more, because they knew not how neither to m  
it. This he had in part (2) promised before to the  
greatest of the Hierarchy of Canterbury before they wo  
lay down with their boughs their swords, but soon for  
his words as Conquerours use to do; But howsoever  
no remedy, He must yeeld, and did once for all: *Thos  
of Cant. and Maurice another Bishop, writing them  
with their own hands, and so they were taken up, De  
Deo debita, with the rest, and they shall be now obser  
for ever. Such they may be, it is harder to conquer L  
then Men, and rooted usages having had time to spread  
like, may contract such a kinde of Connaturality with  
place by consent, that though a generation of men may  
cut off, These will not. I will not say, There is a Clim  
tical fitness, and in such a place some love to grow; As  
other things, There do influences produce and cherish, wh  
being There prospers, being Away languishes, being remo  
ved sighs out fainting desires to return, like the Vine that  
the Elme thrives best, (yea, mutually they cherish each other,  
or the plants of *Trinacria*, which when that Island was o  
ff from Italy, (as ours thought from France) reclined lo  
vingly back to the place from whence they had been taken*

(2) *Vid. Thos  
Spots. prout cisatur  
in Glossar. ad  
Lambard. Arch.  
pa. 222. in vocab.  
Terra ex Scripto.  
& Speed. Histor.  
lib. 9. cap. 1. fol. 8.  
. in Wil. 2.*

No (1) poisoned thing, they say, will live in Ireland: Creatures, their very nature is (2) troubled, and they like to degenerate, when they change soil and climate: Some Northern Beasts are reported to alter (in time) removing to the South, and when from us to any other Countrey, against reason, yet more: As things, may not then Laws naturally love some Countreys, desire to be there, prosper in that Region best, and thitherward therefore recline being separated? bewraying a kinde of sympathy with the place, by that the place seems to want them, and they desire and make to it, resting and having a strange kinde of complacency and delight (mutually) in that approximation! Many things we see we can give no reason of: but we Do see and know Native Laws settle (as in love) towards some places, Ours also so passionately called for Here, as to a despite of opposition, a scorn of denial; May there not then be a kinde of sympathy, and Connaturality of Them with Us, we understand not?

Well: this formal Concession was upon this importunity howsoever made, but how kept? M. Foxe (3) says the truculent soldier feared not to perjure himself: (whence we learn, he had sworn:) Upon which endeavour of revocation, the people were soon up again (4) under Edgar Etheling, Englands Dearling as they called him, Fretbersck The stout Abbot of S. Albans, and Aldred Ep of York being their Chief Councillours, Edwin and Morcar their Chief Generals. These would not bear their forced change of Laws; though Governours they stuck not so much at, neither was there any remedy but gratifie their discontents with a re-Concession. The King enters parley with them at Berkehamsted in Hartford shire, where loth to hazard by the chance of an houre, what he had got not without the expence of bloud, treasure, and

(1) Nullum ibi reptile videri soleat, nullus vivere serpens valeat. Nam sepe illò de Britannia allati serpentes, mox ut proximante terris navigio, odore acris illius adacti fuerint, intereunt. Quin potius omnia penè quæ de eadem insula sunt, contra venenum valent. Denique vidimus, quæ busdam à serpente percussi, rasa folia codicum, qui de Hibernia fuerunt, & ipsam rasuram aqua immisram, ac potui datam, tali, bus proutius totam vim veneni gravantis, totum inflati corporis absumpsiisse ac sedasse tumorem. Beda. Ecclesi. Histor. lib. 1. cap. 4.

(2) The Indian Ounces, What be they but estrall from the Catts of Europe? Spanish dogs, in New Spain, in the second Lister do they not become Wolves? Good Melons transplanted in a bare and barren ground, turn quickly extraordinary smewmers. So there, (Carmania) the Jackals may be of the dogs of Europe, by diversity of air, and soil varying in spe ie from that they were formerly. Barb. Trav. pa. 124 in Carmania.

(3) Martyrol. in  
the Life of Will. I.  
pa. 171.

(4) Speeds Hist.  
lib. 9 cap. 2. sect. 22  
Soden ad Ead.  
marg. n. 1. pa. 194.

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and so long continued industry; He condescends to hear  
as *Rehobom* should, to his wise Councillour (the Am-  
Bishop of *Canterbury*) to yeeld to grant what twas dan-  
rous to deny, and to be pliable for once to those must be  
subjects for ever: *Non tam libenter itaque quam sapient*  
(1) as was said of him in another case, not so much  
lingly as wisely he made Concession, and being also of  
riage fair, and of speech courteous, he so wan upon the  
Abbot *Fretherick*, and all that were with him, that  
were again content to put their neck into his yoake, it  
might be the gentle one they liked of K. Edwards make  
So said, so done: an agreement was thus made which ra-  
ed by Oath and vowed upon the reliques of S. Albane,  
were satisfied, and every one went to his own home. Tho  
this were not the onely time or course of affairs that broug-  
about the establishment of these loved decretals: Elsewh-  
also they were put into (2) K. *Williams* Code, wh-  
willed them to be strictly kept by all,

(2) *Hoc quoque precipimus ut  
omnes habeant & teneant leges Ed-  
vardi Regis in omnibus rebus, adau-  
tatis hiis quas Constituimus ad utili-  
tatem Anglorum.* *Lav bard. Arch. pa.*  
*172. L. 63.* *Selden. ad Eadmer. not.*  
*Pag. 192.*

(3) *Eadmer. Histor. Nov. lib. 3.  
pag. 55.*

(4) *Promisit emendationem le-  
gum, quibus oppressa fuerat Anglia  
tempore patris sui & fratri super  
desunti;* — *Adhaec Clero respon-  
dente et magnis cunctis:* quod  
si animo volente ipsis vellet conce-  
dere & *Chara sua communire illas  
libertates & Confutindis antiquas,  
quaer florerunt in Regno tempore san-  
cti Regis Edwardi, in ipsum consen-  
tent & in Regem unanimiter confe-  
cerarent. Henrico autem hoc liberter  
annuente, & se id factum cum ju-  
ramento affirmante, concreatus est  
in Regem apud Westmonasterium, &c.  
*Mash. Par. ad an. 1100. p 51.**

no doubt) they would stick to him against his elder Brother

Robert

Robert, now in the holy Wars at a distance. With all his heart ; for he must, or no Crown : So he swore them presently, and was not after worse then his wōrd : for he soon directed his Letter to the Sheriff of every Shire, acknowledging his Election, and confessing oppressions past, and promising relaxation to come, grants the Church her liberties, &c. and that all ill customes should be amended, &c. And coming to particulars, that all past murders should be pardoned, and future tried by K. Edwards Law, He after reaches in the whole : (1) *The Law of K. Edward I restore you*, saith he, *with all amendments mado by my Father With the consent of his Barons*: which is the more like to be true, because besides this private Authour, there is agreement of the publike Tables in two Copies (with some small variation,) in (2) the Books of the Exchequer, (3) the title of whose second Chapter is, *De Confirmatione Legum Edwardi Regis*, as if that were the onely businesse. Aiterwards Robert came home, and they parlyng of the great businesse (4) at Northampton, fearing the peoples revolt, he knew no better means to retain them, then by pleasing them with sugar-ed words, telling them, *His Brother was a Military man*, *He addicted to Peace* : *His Brother a new-comer*, *Himself known to them* : *The stranger was like to prove truculent*, *as arriving to them with his hands bloudy from Syria*, but He had granted them King Edwards Law, had sworn it them, had kept it them ; It was his joy to remember the day when that firm and pleasing bond of friendship was contracted between them first, Which also he wiss't everlasting : And if they list to desire any thing more in the same businesse, they need but ask and have ; and thus were they enchanted to be his, almost against Justice : *Parva leves animos capiunt* ; Good words go far with the multitude.

At King Stephens coming to the Crown, we finde not much, but (5) he swore the Liberties of the Church, and gave Charter of them, &c. (6) He promised to reform the over-hard Laws of his Predecessors, and to mollifie extremes under his Seal and Charter : which words confide-

(1) *Lazam Regis Edw. rdii vobis reddio, cum illis emendationibus quibus patre meus eam emenda v. t Confilio Baronum Anglie.*  
*Id. sib.*  
 (2) *Lately published and annexed to Lamb. Arch. p. 175.*  
 (3) *Ib. Pa 176.*  
 (4) *Matth. Par. ad ap. 1106. pa. 59.*

(5) *id in vita Ste-phan. Reg. in prim. pa. 71.*  
 (6) *Speed Hist. lib. 9. ca 5 fol. 3.*

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(1) *An Will. Malmesbury, sciking  
et K. iouts severity, and pickyn from K.  
E. helreds Lawis, and execvng them,  
wherof before : In quatuor Cittadina  
(sath he) etiam nunc tempore sub nos  
mine Regis Edwardi juratur, non quod  
ille statutis sed quod observaverit. De  
Gest. Reg. Angl. lib 2. cap 11. pa 75. He  
lived in thu K. Stephens tyme.*

(2) *Florent. Wigorn, in Gleffar. D.  
H. Spelman pa. 440.*

red, seem much of the import with the (1) former. But before his reign was out, (2) the Londoners were up, and made earnest request to *Maud* the Empresse, then, it seems, recover'd to some power, and gotten thither, that these Laws of *K. Edward* might be restored expressly: *quia optime erant, & non patris sui Henrici, quia graves erant*: whereunto she giving an unadvised answer, there rose presently such a storm of mens passions and

arms both together, that she was glad, with disgrace enough to leave the Town, without taking so much as her Trunks along with her. In *Hen. 2.* (her sons) time, *R. de Glanville* was made Chief Justice. His Book intituled, *Tractatus de Legibus & Consuetudinibus Angliae tempore Regis Hen. 2. compositus*, has, for reasons I shall alledge hereafter more seasonably, little of Tythes, Nothing of King Edwards laws as that Book is come to us: But (3) to the same *Henry* an Authour, and the same *Glanvil* as under him Composer, are ascribed this very Body whereof I speak, and under the same Head given by *Ro. Hoveden* the Historian; Though he was yet, I take it, but the (4) Compiler of them.

But now in *K. Johns* time arose those terrible tempests were like to shake and overwhelm all, the noise whereof was heard all over Christendom; Neither was there any appeasing the storm, or settling toward peace and quietnes, but by so far as these Laws had approbation. *Matth. Paris*(5) tells us, that at the end of some broyles, when the King was absolved at Winchester, he swore upon the holy Gospels that he would defend the Church and Church-men, &c. and revive all good Laws, especially King Edwards, abrogating all that were unjust: which I take it, was done not long after at *S. Albanes*, when peace was restored to all, and on behalf of the King commanded, that the Laws of (6) his Grandfather *Henry* (of him we had but now) should be

(3) *Videremque  
Hovedenus leges  
Edvardi Con-  
fessoris à Guliel-  
mo emendatas, &  
ab Henrico secun-  
do denovo restitu-  
tas, restituunti  
attribuente. Id.  
pa. end col. 1.*  
(4) *Vid. Hoveden.  
Annal. part. postea.  
ad an 26 Hen. 2.  
pa. 600.*  
(5) *Ad. an. 1213.  
pa. 229, 230.*

(6) *This was being  
finely taken,  
Henry the second:  
b: is a judicious  
Conjecture rather  
Jestes: s: Hen. 1. as if it were, Pro avi sui. (Spelm. in Gleff. pa. 436.) which is the more likely, because  
was word, or word that K. John's ware, and were found remembred and recited; as may be seen in Matth. Paris.  
ob-  
lan-  
red-  
tin-  
and-  
bef-  
the-  
I a-  
Ed-  
it-  
he-  
He-  
fir-  
to-  
we-  
him-  
had-  
Th-  
bu-  
(3)-  
the-  
vat-  
he-  
sta-  
mi-  
a-  
C-  
pa-  
pa-  
an-  
an-  
sti-  
bi-  
w-  
so-  
ra-  
th-*

oblsrued, and all hard Lawes repealed throughout England: which when after upon displeasure it was endeavoured to be revoked, the Archbishop follows the King to Nottingham, and so deals that that unjust purpose was revoked; and after, having found a Copy of Hen. 1. Charter (of which before) He takes aside many of the Peers, and thus bespeaks them : *Ye may remember what was done at Winchester; How I absolved the King, and he swore to revive and preserve K. Edwards Laws: I have lighted upon a Copy of them; here it is, Hear it read, and let us make our selves happy once for all by a combination that it Shall be observed.* Hereupon he produces the Charter, word for word, the same as from Hen. 1. even to the particulars of a double mention and confirmation of K. Edwards Laws; and having read it and sworn to it and the Combination together, by the next (1) news we hear of K. John, he is like to turn Mahumetan to shift himself of those troubles his inconstancy to these good Laws had wrapped him in. Nor ended the businelle so : (2) The year following was a great meeting at Saint Edmundsbury, to force the King again to make good the liberties and (3) those Laws: soon after Ch.iftmas the year following, they come boldly enough upon him and demand the observation of them, and performance of his promise; when he craved time to deliberate, and meant but to delay, they smelt it, and assembled a great Hoast at Stanford, and coming after to Brackley, where they had a parley, offered a Schedule of their demands, containing the old Laws and Customes of the Land, and those are (4) after said to be partly out of K. Henrys Charter, (of which before) and partly out of K. Edwards Laws still. So that thus far plain and even way till among the Charters, and in Treaties and Consultations, Acts, Orders, Grants, and Demands, still these were a considerable part, the onely foder to combine the disagreeing parts, of the brittle body Politique; and when the rage and fury of the people was up, nothing was so effectuall as this, like cool water to sprinkle upon their raging fiery passions; Stroak them with a Concession of these, and they were calmed presently. I confess we are

(1) Id p. 233.

(2) An 1314.  
id. p. 243.

(3) They produced the Charter. Continebat autem Charta quasdam libertates, & Leges Regis Edwardi Sancti, Ecclesie Anglicane pariter & Magnitudibus concessas, exceptis quibusdam libertatibus, quas idem Rex de suo adject. ib.  
(4) Capitula queque legum & liberatum que ibi Magneus confirmari querebant, parum in Charta Regis Henrici superius scripta sunt, partimque ex legisbus Regis Edwardi aequis excerpta. Id p. 244.

yet short of Hen. 3. whose was the ratification and renew'd allowance onely, not first grant of that our present laws take chief notice of, by the name of *The Great Charter*; But withall it is to be observed, that This was chiefly an extract of Those, and that which K. John confirmed by Oath, and his Barons contended for, and would not be denied to have made good in Deed, was but Hen. 1<sup>s</sup>. Of which one that had searched and was like to know, tells us: *Vix* (1) *itaque haec (Henrici 1.) dici potest. basis & fundamentum ipsius Magnae Chartae, que ex parte maxima leges antiquae & Regni Consuetudines continebat, quamque Hen. 3. nos confirmavit antequam per milites 12, vel legales homines universi ejusque Comitatus per Sacramentum inquire fecisset que fuerant Libertates in Anglia tempore Henrici avisi.* So the Great was but taken out of the other Charters, renew.ng (with some variation) what they had granted before, and there is urged authority for that derivation, which their comparis'on and consent will well enough make good. Thus having brought these Laws among the Charters, thorough them, and to the last and Great; They now with ease and plianceness enough come along and have a place in the Petition of Right, where That was owned sufficently, and as many Ratifications as there were intercedent, even Parliamentary, so many must be acknowledged to fall in by the way (at least by implication) Hither: Of that great Law of Tythes I mean, which having so fair and eminent a place in K. Edwards, must also have as full and frequent a ratification all along in that bulk of laws so ratified, which justly occasioned this Narrative; And by it we see a part of that strength the Law of Tythes hath on this side the Conquest, even in the Common Law still, by that it was part of it at first, and a very remarkable part of that is taken to have been the foundation and first rise of the beginning of the Common Law, and since hath, as now, been seen, allowed, and approved with it all along, with impetuous rage and violence called for by the people of the land, and they would never be quiet but under this Regiment, or without these beloved orders whereof Tythes were a considerable and

<sup>1</sup> Sir Roger Twidell, in his Preface to the Laws of Will. 1. pag. 157. Cook has the same in his marginal notes on the Charter in his Institut. 3 cha. 1.

and eminent part. If they had been pressed upon them by those were interessed by profit, or the tyranny of command from above had settled, or kept them upon their weak and declining shoulders, as unwilling as unable to bear, Reason would there shoule be at least some more colour of strugling to free themselves from the force, and their hands have leave to loose their necks from the yoak of unjust imposition; But sith they desired them, bespake them, contended for them, and would not be denied, but fought that they might pluck and keep that Burden upon themselves; what can be more equal then that, as their own act binde themselves, so their inheritours and successours also, and that whether to gain or to losse, yea, to losse as well as to gain, they stand to them, and every good man with his own whether Act or Right, sit down and Rest satisfied and very well contented?

Most things indeed finde some opposition; few are so happy to escape altogether free, and some Persons may perhaps think good to doubt of All here: As, whether these references dispersed and represented as before, point to King Edwards Laws, or some other? which latter If, All hithe to would seem beside the Cushion. But in answer would be considered, 1. That no such thing appears as mis-application, neither are other with much probability suborned in their place. 2. The title, the old title, and that from as far as Roger Hovedens time, speaks for them, and plain, *Hæ sunt leges boni Regis Edovardi, &c.* 3. Divers passages alledged, glanced at, and extant beside can hardly be understood but to contribute the strength of their Testimony this way. 4. To this also the likeliest guides have led us: M. *Lambard*, in his Edition; M. (1) *Selden*, in his Allegations; (2) *D. Tildesley*, (3) *Sir Henry Spelman*, (4) *Sir Tho. Ridley*, and of late (5) *D. Wheloc of Cambridge*. Could all have been mistaken? Were they all in the wrong? Shall we take in a point of doubt the whole world of Learned men to be nothing else but a flock of sheep, wandring from the truth themselves, and leading others unto errour that follow them? Take what we finde: They are generally reputed *His*, clearly styled *His*, have continued to be reputed and styled so long enough,

(1) *Hist. of Tythes*  
ibid 8. pa 224.

(2) *Animadvers.*  
on that Chap. pa.

164.

(3) *Concil. Tom. 1.*  
p. 620. and of  
*Tythes*, chap. 37.  
pa. 131.

(4) *View of the*  
*Ecclef. Laws*, Part  
3 chap 2. sect 1.  
pa. 111.

(5) In his late Edi-  
tion of M. Lam-  
bard, *Archæon.*  
Anno 1644.

enough, and nought appears clear to the contrary; and Why Then may we not Therefore embrace them for His, and Genuine, crediting the voice of the world? Which how, and why taken into the Coronation Oath, we may by these things, as they were, in part also conjecture. But of this hereafter, or as shall be occasion: In the mean time, of them, and of this Branch of Tythes in them, Thus much.

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## C H A P. XVIII.



TEP we next into the Church, but by degrees, and taking in some such things by the way, as could not have found so fitting place elsewhere: As namely,

1. Remembred be it, that Tythes were payed under the Conquerour: They were so; For as well (1) M. Selden hath it in divers particular from the most authentique account of this Lands Surveye presented in *Domus-Dei Book*, (others agreeing, and enlarging his proof:) As (2) Matth. Paris consents, in thus relating a dismal Tragedy acted under William the first, about forcing Priests from their wives; They, saith hee, (the Priests) grew scandalous, the people rose up against them, Lay-men fell aboard with the Sacraments, Any would administer Baptism, and then went Tythes to wrack: Decimus etiam Presbyteris Debitas igne cremant: They acknowledged their Dueness, but of malice they set them on fire, loth the scandalous married Presbyter should have any good by them, and yet afraid it seems to meddle with them for common profane use; And they that did so, in the next words we find treading the Sacrament under their feet.

2. Own, as about this time owned that Law of K. Edgar, avowed after by K. Knoght or Knont, and (3) now renewed by the Norman Hen. I. for rule, penalty, and order for execution: And this here assured from the best means of

(1) Chap. 10, pa.  
279 &c.

(2) Ad An. 1074  
pa. 8. & vid.  
Selden. ad Ead-  
mer. Histor. pa.  
168.  
And for after-see  
the complaints,  
(suppos'd pay-  
ment) in John of  
Chartres. De nu-  
gis Curial. lib. 7.  
cap. 21.

(3) L. Hen 1. ca.  
1. among the ad-  
ditionals to M.  
Lambard: where  
of before, pa 84.  
& pa 88.

## of TYTHES.

III

information, a double entry thereof in the Exchequer Book, among the fairest testimonies extant of the Land.

3. Adde, not mentioned before, that which resembles a Parliament in the same King (*Hen. 1.*) days, assembled at Westminster about the beginning of his Raign; where, for stating divers things then raised in doubt, among others was ordered (1) Thus: *Ut decime non nisi Ecclesiis dentur: Let Tythes be paid to none but Churches;* Supposing their Duenels, but limiting to whom they should be paid: They might *Nos* but to the Church, Therefore *There* they Might; else the supposition had been a vanity, and the publick voice said as good as nothing. Darkness seems to be over the meaning, (or what should be the import,) but light may be borrowed from the state of things then about; and I conceive of it and them thus. Then was not onely started, but in a warm C<sub>i</sub>afe, the great doubt between the Secular & Regular States, about the due and immediate Receiver of Tythes, (not the Duenels, but the Due receiver,) and the claim parted between two, the Church & the Monastery: The last might have heard (2) Saint *Augustine*, should say, *Decime sunt tributa e gentium animarum*, (after (3) taken into the Canon Law,) *Redde ergo Tributa pauperibus, Libamina sacerdotibus;* And the (4) Capitularies, That they were the vows of the Faithful, and the patrimony of the poor: Hence, allowing the Churches claim indisputable, They might *There*, *In signum universalis Dominii*, They doubted whether they might not also be paid into the Monastery, and that duty of a Reall confession of a Deity be sufficiently discharged in giving to *Themselfes, the poor*, that whereby they might as well confess and acknowledge a Divinity and high Providence by, as by giving to the other Church-men? Now how votes the Assembly? *Ut (5) Monachi Ecclesiis non nisi per Episcopos accipiant*, afterwards, *That none receive what was the Churches, but by the Church;* (and then (6) not to shave so close, that the labouring Minister might be to seek of wherewith to cover his Nakednes; a very con- scionable and reasonable provision!) And here, *Ut decima non nisi Ecclesiis dentur:* That is, Those Tythes that are paid,

(1) *Eadmer Hist. Novorum, lib. 2.*  
pa 68.

(2) *Serm. de Temp. 248.*

(3) *Cant. 16. Q. 7.*  
1 cap 66. *And as home in Excep.  
Egbert. Can.  
100, much to the  
same.*

(4) *Res Ecclesiæ  
sunt vota fidelium,  
patrimonia pau-  
perum. Capital.  
Carol. lib. 1. ca. 83.*

(5) *Vid. Gratian.  
Vb. Sup. ca. 57.  
& 59. agreeably.  
6 Neg. ibi datas  
(Ecclesiæ) ita  
explicente suis  
reditibus, ut  
Presb. teri ibi  
servientes, in iis  
qua sibi & Eccles.  
suis necessaria  
sunt, penit a*m*  
patiarunt. Ead.  
mis. Vb. Sup.*

## The Civill Right

paid, and openly known to be due, in exclusion of the Monastery (immediately,) let them be issued forth onely to the Church. Another remote, mediate title they might have, that is, in the Churches Right, bringing them in in the Church-way, but of themselves they may not presume so high to lay any claim. Much more might be said, but this seems enough to enlighten the meaning of a dark Law, and as by all states equally and indifferently made, seeming to be universall binding: For it was not onely a Synod, but (1) a part-seculare Assemby: For, besides the Royall Authority, there was also the Peerage; I will not say, the Commons, but *Primates Regni*, which in some sense They may be styled, as the Heads of those they represent. *Adunatum est Concilium;* for more firmness, both States met, and united their Councells to give things the more countenance and strength of universall authority.

(1) Anno dominice incarnationis 1103, tertio Regni Henrici glorioli Regis Anglorum, ipso annuente, celebratum est concilium in Ecclesia S. Petri in occidental parte iuxta Lundoniam sita, communis consilium Episcoporum & Abbatum, & Principum totius Regni. In quo praedicti Anselmus, &c. Huic conventui assuerunt, Anselmo Archepiscopo perente a Rege, Primates Regni, quatenus quicquid ejusdem concilii auctoritate determinetur utrumque Ordinis concordi cura, & sollicitudine datum servaretur. *Eadmer. Hist. Nov.* 43 p. 67.

(2) *1 Cor. 6. 2,3.*

But the chief strength of these Dues was in this Intern in the Church, and so properly to our days, and the discussio of them in its own sphere with Church-men onely: For this time they had gotten such a strength of credit and rep- tation, as well as power to be trusted with their own matters and with the things of Religion, (their proper cure,) Tythe came in, as the support and maintenance, That now grounding themselves upon the allowance and permission of the State, they might make Canons for themselves, and see them do execution, make orders for their Dues, and send for them in; and that ordinarily they did so, is sufficiently known to all that are acquainted with them, and the then transactio of things in this State. *Do ye not know that the Saints shall judge the earth?* (saith (2) Paul) *And if the world shall be judged by you, are ye unworthy to judge the smallest matters?* *Know ye not that we shall judge the Angels?* how much more the things that pertain to this life! Lower, trifling, pe- rishing things! Can a man be thought fit for *Those*, and not for *These*? Is it like that his discretion, learning, judgement, honesty, and universall integrity and sufficiency, should be an equall match for Heavenly matters, Divine things, Scripture-Oracles, reserved Mysteries, Articles of Faith and Reli-

gion, and yet he be unfit to determine in a few worldly trifles? Heaven is under his hand, and Earth above him! These and such persuasions wrought, it seems, upon the reason of those times, (to have the Ministers of Religion intrusted at least with their own,) and thus much farther and out of the way, that the Temporal Courts were then chiefly ruled by Ecclesiastical advice, Councillours, and Judges; the Council Table, Common Pleas, Chancery, Judges *Itinerant*, and even the Vice-Royes Seat being often filled with those men, whose breeding to letters, successful progresse in them, gravity, piety, and more then presumed honesty, made King and people of all sorts think nothing so well done, as what they would set their hands to, and the government of no affairs so well steered and managed, as what the Teachers of Religion and Men of God, (to whom they had committed the government of their souls,) would condescend to stoop and interpose for the conduct and guidance of; But as to Tythes, sure their Jurisdiction, as things belonging to Religion, was now brought in from the mixt County-Court, and settled among them alone, *Illâ se jactet in aula*, Authority had said so, and given leave; And then, as the Lord of a Mannour having authorised his Steward to keep Court, the Acts passe with his Authority, though by the others Ministry; So though Decrees and Determinations of emergent affairs were agitated by Ecclesiastical persons, and had their sentence and seal by their consent and mediation, yet the Supream and Universal Power having given Commission, the things were authoritatively done, and regularly firmly enough Thence without any usurpation or irregularity, As in the Common Pleas, Seat of Assize or Sessions, where the Kings Substitutes did (whoever or whatsoever) firmly enough by his power in his personal absence. Neither was this any wrong to Any: for so the publick hand gave out Justice, what matter was it, (1) which? So the Throne were established in Righteousnes, what matter who the Supporters? So Right were done, which was the *Thing* whereof came the benefit, what matter who were the *Ministers* that gave it forth, whether of this sort or that, one or another? Though a fair presumption be still for

(1) *Vid. Ridley,*  
*View of the Laws,*  
par. 3 cap 2. sect.  
2. pag 147.

## The Civill Right

for him that wears the Gown, and turns the Bible; and generally even Humane affaires are thought and found better established, that have their stay by Religion. In fact thus, Here it was so: that Causes Decimal moved in this sphere of the Supreme Powers Ecclesiastical Cognizance and Jurisdiction solely, properly and only; Neither may we henceforth expect, save in a glance or by reflex, any memory of Regular discussion and determination of them save in this compass: Or, as one Neighbour-Court takes notice of another, the Common Pleas of the Kings Bench, or the Chancery of the Exchequer; So the Secular whether Courts, Acts, Rules, or Decisions, took notice henceforward no otherwise of the dueness or disposition of Tythes, then by a neighbourly Reflexe, as the Admiralty takes notice of Englands Common Law, or the County-Court did of the Bishops Visitation.

(1) Glanvill, de legibus Aug. li.2 cap. 12.  
7...8, 13, 14.  
10...12.  
12. - 21, 22.  
Bradton de Except. cap. 3. sect. 2. cap. 4. sect 2, 3.  
7. cap. 10. sect. 1.  
Radulph. de Hengham sun. parva, cap. 8 pa. 105.  
Flet. lib. 5. cap. 5. sect. 50.  
cap. 16. sect. 26.  
cap. 28. 10. ca. 30.  
1, 2. li. 6. ca. 39.  
sect. 3. 9. ca. 44. 6.  
Statute Wellman.  
2 cap. 5. Circumspecte Agatir, 13 Ed. 1. Cooks Institut. 2. pa. 487. Doct. & Stud. Dis. 2. cap. 55. Book of Entries, fol. 488.

(2) Our Ancestors having the Commonwealth before ordained and set in frame, when did agree to receive the true and Christian Religion, That which was before and concerned a tern policy which their Apostles, Doctors, and Preachers did allow) they held and kept full with that which they brought in anew. And those things, in keeping whereof they made conscient, they committed to them to be ordered and governed as such things of which they had no skill, and as to men in whom for the holiness of their life and good conscience, they had a great and sure confidence. So these matters be ordered in their Courts, and after the fashion and maner of the Law Civill, &c. Sir Thos. Smythes Common Wealth, Lib. 3. cap. 11. Vol. Cook Institut. 2. p. 488 agreeable hereto.

(3) Curia Christianitatis, id est, Ecclesia in qua servantur leges Christi: cum tamen in ea Regio serventur leges mundi. Lyndwood sse. de fato competent. Glouf. Curia.

(4) Agantur itaque primò debita verè Christianitatis iura, secundò Regis placita, postremo causa singulorum. L. Mon. 1, cap. 7. in Lambard, pa. 180.

vation,

vation, were here set aside to a select Committee by themselves, who by their rule should judge of Heresie, Schisme, Apostacy, Scandal, &c. comparing spirituall things with spiritual; Neither was the purpose of erection, the naturall Jurisdiction, the lawfull bounds, or intended first power as far as I could ever know or learn, meant of any excesse beyond this compass: Men might be irregular, and their courses exorbitant, Themselves wilde, but this their first and intended, allowed path: It may not be amiss therefore, I say, to give the Original of that Court,) its rise, growth, strength, and first power, when and by whom set up, and to what likely purpose: All which, may not be better sought then from the very Patent of Erection, which here therefore, (and because it is some rarity, at least not vulgarly known) from suggestion of good credit, I give and exhibite. The Law of *Circumspecte Agatis* was directed to the (1) Bishop of Norwich, and the old Charter upon Record to the (2) Sheriff of Herefordshire, yet so as either the power and vertue of each was meant to reach to all, or, *Mutatis mutandis*, severall like Copies were sent: So here to Remy Bishop of Lincoln; but it was the mould of all Ecclesiastical power. The Charter speaks thus:

*Willielmus Gratia Dei Rex Anglorum, Comitibus, Vice-comitibus, & omnibus Francigenis & Anglis qui in Episcopatu Remigii Episcopi terras habent, Salutem. Sciatis vos omnes, & ceteri mei fideles qui in Anglia manent, quod Episcopales leges qua non bene, nec secundum sanctorum Canonum precepta usque ad mea tempora in Regno Anglorum fuerunt, communiki Concilio, & Consilio Archi-Episcorum meorum & ceterorum Episcoporum, & Abbatum, & omnium Principum Regni mei, emendandas judicavi. Propterea mando, & Regia autoritate praecepio, ut nullus Episcopus vel Archi-Diaconus de lezibus Episcopalibus amplius in Hundretto placita teneant, nec causam qua ad regimen animarum pertinet ad judicium secularium hominum adducant, sed quicunque secundum Episcopales leges de quacunque causa vel culpa interpellatus fuerit, ad locum quem ad hoc*

(1) 13 Edw. 1.  
(2) Matth. Par.  
ad an. 1100 pa.  
53. in Henr. 4.

Cook Instit. 4. of  
the New edition of  
Counts, cha. 53.  
p. 259. and see  
M. Selden of  
Tiber, cap. 24.  
sec. 1. and in his  
Not. ad Badmer.  
pa. 167.

*Episcopus elegerit, & nominaverit, veniat, ibique de causa sua respondeat, & non secundum Hundrettum, sed secundum Canones & Episcopales leges rectum Deo & Episcop suo faciat. Si vero aliquis per superbiam elatus ad iuriam Episcopalem venire non voluerit, vocetur semel, & secundus & tertius; quod si nec sic ad emendationem veneri, Excommunicetur: Et, si opus fuerit, ad hoc vindicandum, fortitudo & Justitia Regis vel Vicecomitis adhibeatur: Ille autem qui vocatus ad Justitiam Episcopi venire voluit, in unaquaque vocatione legem Episcopalem emendabit: Huc etiam defendo & autoritate mea interdico, ne ullus Vicecom. aut propositus, aut Minister Regis, nec aliquis Laicus homo de legibus que ad Episcopum pertinent se intrimittat: nec aliquis Laicus homo alium hominem sine Justitia Episcopi ad judicium adducat; Judicium vero in nullo loco portetur nisi in Episcopali sede, aut in illo loco quemus hoc Episcopus constituerit.*

This is by good information the erection of the Count Christian: Before which, things (Tythes) were handled in Conjunction with other matters, at one meeting under several persons; but here their Jurisdictions were parted. Then seems observable in this Concession:

1. That the Royal power acts, and derives this Authority and leave to exercise Jurisdiction, and where, and how far, from it self: *Mundo, & Regia autoritate præcipio. For dignitatem & Quis? Who is to grant here (1) Liberties but the King?* omnes qui in regno suo sunt: Habet enim omnia jura in manu sua que ad Coronam & Laicalem pertinet potesta enim & materialem gladium, qui pertinet ad regni gubernaculum; habet etiam Iustitiam & Iudicium que sunt Jurisdictiones, ut ex Iuridicitate one sua, sicut Dei minister & Vicarius, obbuat unicuique quod suum fuerit. Habet etiam ea quae sunt pacis, &c. Habet etiam Coercitionem, &c. Item habet in potestate sua leges & constitutiones, &c. Nihil enim potest jura condere nisi sita jura tueratur. Habet igitur Rex hujusmodi jura sive jurisdictiones in manu sua. *De sequitur. infra dem. cap. 24. selt. 1. fol. 55.*

*For he was under God sole Monarch: and so though he might not exercise all powers, it is right he fit should dispose of all powers, as to rule Preachers, though he did not preach, and so cause his soul-savers by laying the burden of Duty upon whomsoever he should think fittest. He should have been everywhere, but still he cannot, saith the time Author, of Delegations: Si ipse Dominus Rex ad singulas causas terminandas non sufficiat, ut levior sit illi labor, in plures personas pati ut onere, eligere debet de regno suo viros sapientes, & timentes Deum, in quibus sit veri ascelorum, & qui oderunt avaritiam (quae inducit cupiditatem) & ex illis constituere justitiarios, &c. Id de Alison 10. 1. fo. 108*

*Tow very Picturesquely alledged by M. Selden, as an instance of the Kings Supremacy, in all causes, over all persons. Ad Eadmer. Nut pag. 166.*

says

says Bracton: He speaks it of Lay, but who sees it not to be fairly interpretable a part of Lay-business to oversee and appoint Church-men what they should do, to direct and order where they shall speak, and treat, and act, or where not, if the manner or consequents foreseen import just fear of trouble or disturbance. Neither is this an usurpatiō or incroachment upon what is of spiritual office, any more then for *David* or *Hezekiah* to appoint the Courses of the Priests, How their Ephemerides for divine services should be observed, for *Solomon* or *Joshua* to rule All Israel, or, amongst us, a Church-Warden to examine, and grant or deny a man licence to Preach, where he has power, and he is intrusted with the peace and order of the place, which is not to meddle with Preaching, but order about it.

2. That Royal power was full: for it was done in Common-Council, *Communi Concilio, & Consilio* (by the advice) *Archi-Episcoporum, &c.* *Et omnium principum regni mei*, All the Chiefs of the powers about him.

3. The things limited to be directed about, were meerly spiritual, *qu. ad regimen animarum*, no danger or intent of meddling with affairs of the Common-wealth, or interfering in business of Lay fee. A very good, and the best boundary of this Jurisdiction, and which alone secures extravagancy, from power to disturb in secular business, or so much as meddle with meerly humane affairs or interelles: whereunto the title also of, The Court-Christian, or of Religion, should have not a little furthered.

4. The remedy upon contumacy in not appearing, was proper, of Excommunication: *Peters onely sword he might lawfully wear and use, and this but onely by the Kings Commission.*

5. Yet the King assists him in the use of this, and comes to relieve his spiritual by the temporal, if need be. For the sword should back the Word, yea, *gladius gladium iuvat*, intwisted power is strongest, and needs to be mutually assistant one part to the other.

6. No Lay Judge was to intromixe: What needed? the things treated on were, or were to be Ecclesiastical, and of another.

another sort: They had their shop by themselves, and won to do, and each his own proper and fit; And it has been the great wisdom of the Nation to keep them apart, every several thing by it self, that no work or power should cross another.

(1) *Lo. Coke, Vbi Sup.*  
 (2) *Art. 1, that Book being of Hen. ... time, the Bishps sat then in the five Courts, and Christianitatis Curia were then there pleased. Vid L. Hen. cap 7, pa. 180. annexed to M. Lamb. Arch.*

(3) *Cook ib.*  
 (4) *Criterium in acto Rob Winchelſſi Archiep. Cant. Registro seu publicis ejus tabulis MSS. rodi- den ferè verbis occursit id quod Gulielmo Regi hic tributari.  
 Regi enim Edwardo 1. in or- dinum Comitis, &c. Selden Not. ad Eadmer. pa. 168  
 (5) *Hift of Tythes cap. 14. sect. 1.*  
 (6) *Printed in An. 1623. p. 167.**

Object. Some Objections are from a (1) name not to be despised: as the time of inrolling, not before Rich. 2. time, and some oblique (2) contradiction from the Red Books in the Exchequer: as if by these the Patent Were not authentick: But,

Auf. 1. Scarce is there any thing but somewhat may said against.

2. At fair distance enough is the time of inrolment, Rich. 2. and then it was but inrolled.

3. The preserver with the place of preservation are much moment, scil. in the Tower, by the King: neither which but gives much of presumption against forgery.

4. And other transcriptions do also agree: Manuscripts like this, and of those several kept too where least suspicion of forgery is again, in Registers. As those of the (3) Bishop of London, and Archbishop of Cant. In which (4) Robert Winchelſſe so long since as in Edw. 2. time, (and long before Rich. 2. as in his great Grandfathers days) set his draught of *Articuli Cleri* upon it, Presented to Edw. as the grievance of the Church, and in his ninth year assembled to for remedy.

5. M. Selden (a great name) questions it not. He made use of it (5) thirty years ago publicly enough: He first exhibited it to view in (5) the edition of *Eadmer's Historia* and has not (I believe) yet manifested any revocation opinion.

So that I see not but we may set down this for the Bishop's Patent of Jurisdiction, authentick enough, so long since had any, and the first foundation of the Consistory, or as it was called *Curia Christianitatis*, in England the Court of Religion: not unsightly remembered here as the bottome of the power whereby the right of Tythes was with us discussed, and themselves recovered, as they had been, and were after, (as shall

shall continue to be shewed,) stated by the Law. Whereunto there was also successfully and ere long such following and stronging recourse, that the great Inquirer here last mentioned findes it a task worthy his painful search and curious diligence,

(1) whether, after, the right were regularly handled under any other Jurisdiction? He findes sparingly *some instances*,  
(1) Hist. of Tythes. cap. 14.

(2) *as about Hen. 1. and his successors time, till Hen. 2. and*  
(2) Pa. 422.

K. John: But since only in fives cases. 1. *By way of prohibition upon a suggestion of a Modus decimandi.* 2. *In a writ of Indicavit:* (But neither of these were at first instance.) 3. *By Scire facias from the Chancery in some cases.* 4. *In some other by process of bare command.* And, 5. *By virtue of the late Stat. of 22 Hen. 8. and 2 Edw. 6.* No more: And these were but some scattering exceptions from the generall rule neither. He prefaces that inquiry with (3) these words:

(3) Pa. 412.

*It is clear (saith he) by the practised Common Law, both of this day, and also of the ancient times that we have in our Year-Books, that regularly the Jurisdiction of Spirituall Tythes (that is, of the direct and original question of their right) belongs, I think, as in all other states of Christendom, properly to the Ecclesiastical Court. And the latter Statutes that have given remedy for Tythes infested from the Crown after the dissolution, leave also the Ancient right of Jurisdiction of Tythes to the same.* He inserts (4) after, (4) Pa. 411. that since about K. Johns time *Original Suits in Temporall Courts for Tythes have been rare:* Adding, upon a long discourse of the Indicavit, and changing the proportion of the dues of a Church to be the ground of it by the Statute of West. 2. cap. 5. (5) *that long before, Tythes were demandable of the owner detaining them, of their own nature, and pleadable in the Spiritual Court, and there only;* and concludes, (6) *that since 22 Edw. 3. there have been no Original Suits for Tythes in Temporal Courts, saving onely upon Prohibitions (at second instance,) and by the Stat. of 22 Hen. 8. and 2 Edw. 6.*

(5) Pa. 427.

(6) Pa. 447.

It is some difficulty to understand learned men; but the consent these things seem to have with the truth, and have both among themselves and with other of like nature abroad, renders

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renders it hoped there hath been here no mistake ; which if, Then hath been gained 1. The erection of the Court Christian by *Will.* 1. 2. The transaction of Spiritual things there, even though formerly under the cognizance of the Common Law and Lawyer immediatly. 3. Tythes, (as *Spiritualibus annexa*, and evidently belonging to Religion, and theme within the compafs of the Canons,) To move here as in their proper sphere. (Remember their Right was well enough provided for before, Here were onely to be some emergent decisions for their regulation, or Recovery of stated dues.) 4. The Lay Jurisdiction outed as to cognizance immediatly direct and ordinary. 5. In practice things have been a doubt according. 6. And therefore we must now chiefly a while attend the Church.

## C H A P. XIX.



Which we shall in two parts : as well to the  
dare, as *In's dicere* ; to what we finde in the  
Interval to have been *Legislative*, as what  
was *Executive* ; Giving more largely what  
belongs to the former, wherein was used the  
allowed power given in Regulating the Rule  
framing Canons, or setting or keeping to right, that Law was  
here the rule of Right, but more sparingly touching at the  
later which concerned known practise : For, that such Courts  
were kept, is a thing vulgarly and to all known ; That a dis-  
cussion was there, and a sentence the ground of Right and  
Own, the Lawyers of the other Gown will not deny ; That  
things were there disposed, transposed, and settled to full  
property, the event did shew. Of this therefore the more spar-  
ingly, which is known and did but help to *Recover Right* ;  
That which *Gave it*, being more proper for us, and both  
fitly ranged under that generall head of what was done by  
that

that power we are now confined to, which is Ecclesiastick. And here first, if the Synod at *Westminster*, whereof (1) before, were but a Synod, remembred be it and granted hence, what authority it must then have had: And likewise another more clearly a Synod under the Conquerour, but written in Saxon, where, (divers laws preceding of fasting, alms, penance, &c.) we have, (2) *Let Tythes be paid of all that is possessed by the Lords bounty.*

(1) Pag. 111.

(2) Selden. Hist. of Tythes, chap. 8. sect. 14.

(3) M. Th. Par. ad an. 1005. pa. 21. in Will. 2,

In a Council at *Cleremount* in France, one (3) Canon was, *Una quaque Ecclesia decimas suas habeat, nec ad aliam transferantur. Let every Church have its own Tythes Without confusion:* Which would not likely have been taken notice of in our authentique story, if it had not concerned us, as indeed it did, and was no doubt (4) of Catholique observation.

In (5) Hen. 1. time, I finde it decreed in a Council held under *William* the Archbishop about the year 1129. *Decimus sicut Dei summi Dominicus ex integro reddi pricipimus. We command they be fully allowed as the Lords Demesnes.*

In (6) another at *Windsoe*, about then is this Canon: *Us Lasci decimas reddant sicut praceptum est: That Laymen pay, as is commanded.* (I am now transcribing, and so hastening: It will not be long ere we get on our own wings again.)

(7) *Alberique Bishop of Ostia* was Legate here under *Innocent* the second, in *K. Stevens* time, and He held a Synod in Anno 3. where is this Canon: *De omnibus Primitiis rectus decimas dari Apostolica autoritate pricipimus, quas qui reddere noluerit, Anathematis in eum sententia proferatur: Let him that pays not, be Excommunicate; where it seems Primitia must be understood for every new years encrease.*

(7) Id. fed. 18.

(8) In *Eugen.* 2. time, about the year 1147, under the same King was held a Synod at *Westminster*, wherein tythes are disposed of. It has no more then a supposition of them, and that the Church disposed, which may yet crave place here as not of no consideration. *Nullus Abbas, Nullus Prior,*

(8) MSS. in the  
Biblio Library  
at Oxford cited  
in the margin of  
D. Ridley. View  
of the Laws, pa.  
155.

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(1) Ib.

*Nullus omnino Monachus aut Clericus Ecclesiam five decimam — sine Episcopi Consensu, &c. And (1) two years after in another Synod there to the same purpose : Ut nulla persona Ecclesias vel decimas accipiat — sine authoritate Episcopi.*

By the way, we may not about these times much look for set and purposed binding Laws about Tythes ; They needed not, For Such had passed before, sufficient to raise and assure a *Duc*: But onely to *Regulate*, dispose, or determine about emergent controversies, concerning them, and their not wanting.

In Hen. 2. time, I finde Alexander the third directing severall Constitutions (for that force his Orders had here) to the Bishops of *Canterbury*, *Winchester*, and *Exeter*. They are taken by *Gregor. 9.* into (2) the body of the Decretals, and no doubt had their power and found obedience here : for (3) where the Kingdome did not crose, the Canons were, — and it seemes by the Proviso of 25 Hen. 8. 19. are binding Laws. And let no man object here the usurpation, or alloy of credit from forain authority : Things settled do, no doubt, often contract a right in Time, which (if the power be able to support and bear it self out,) doth with continuance grow up and foder into strength and firmesse enough, able ere long to walk the world without guide or aid, or we have little of stayednes and solidity here in *England*. If we ge about to undo all (of secular depending on sacred) which had its first rise, and that whereby it yet stands, from *Rome*, We need not go beyond Sea for *Babylon*, it will come home shortly to us, and we shall have confusion enough within our own Thresholds. Though we do not in present, we must allow of many things done heretofore and settled by usurpations, proceeding as well from abroad, as exercised at home, or the front of weightiest transactions will be robbed away from us, perhaps the pillars of the Common-wealth shaken. As to those three Epistles, the first of them gives order as 'twere by a binding Law, thus : (4) *Per-venite ad nos, &c. Mandamus, quoniam Christianas vestras monere curretis, & si opus fuerit, lib. Excommunicationis digni-*

(4) Cap. 5.

*decimione compellere, ut de proventibus Molendinorum, Pisciarum, fæno, & lana decimas Ecclesiæ, quibus debentur, cum integritate persolvant.* It was for four sort of Tythes to be paid, of Mills, Fish-ponds, Hay, and Wool: having after monition, Excommunication to refusers.

(1) The next is to the Bishop of Winchester: *Nuncios;* <sup>(1) Cap. 6.</sup> & infra. *Mandamus quatenus Parochianos tuos de aribus,* & de omni fructu decimus persolvere Ecclesiastica districtio-  
ne compellas. for Bees, and Fruit.

(2) The last to the Bishop of Excester: *Cum homines de* <sup>(2) Cap. 7.</sup> *Hortona, de frugibus, novem partibus sibi retentis, decimam Ecclesiæ cuius Parochiani sunt, sine diminutione solvere te-  
nentur; & antequam id faciunt servientibus, & Merce-  
narioris suis de frugibus non decimatis debita sotius anni pro  
servicio suo impendant, tunc demum de residuo decimam sol-  
ventes, Mandamus quatenus eos cogatis, ut decimam statim fructibus collectis persolvant, atque de subtractis &  
retentis dignam actionem exhibere procurent.* It seems they were willing to deduct the charge of the Fermage before they marked out the Tythes, paying their servants out of the fruit for the work bestowed about them, and so apportion only out of the free bounty of heaven, (3) a thing much stood upon, and by this Law stood against, which willed the tenth of all as it grew, and so was the pattern of the Old Testament: Their seed and labour were also chargeable, yet they were bound up, of All, without any deduction: And if *Iehovah* gave them their land, which, (presuming they would sow,) he might the better expect a charge from his own gift, This exaction is no less reasonable, or more bur- denome from us who Give nothing (of our own,) but issue out only what was Given and set aside by others; it *Iehovah* required to be restored back to him of his own, we doe but pay what others of their bounty Gave, And therefore with them as to separating any thing we are possessed of in full title as our Own. *Iam sumus ergo pares.*

Out of the Canon (4) Roger Hoveden points us to another plant growing in our-own soil, which no doubt lived to take fruit downward, and bear fruit upward; and it was set

<sup>(3) Cap. 22. 24.  
28. seqq. & Vid.  
Lyndwood tit.  
de decimis cap.  
Errors Cap.  
Quoniam prom-  
ter. & cap. Sancta  
Ecclesia.</sup>

<sup>(4) Annal. par. 3  
pp. 543. Edit.  
1601 Francfor.  
That it was taken  
out of the Council  
of Rome (ex Cen-  
cilie Romana,  
genit.) the latter  
forthばくはなばく  
the margin.</sup>

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toward the end of this Hen. 2. time by Rich. Archb. of Can., in a Synod at Westminster the Lo. day after the Ascension, where (the King and his son being present) passed thus: *Omnis decima terra sive de frugibus sive de fructibus, domini sunt & illi sanctificantur. Sed quia multi modo inveniuntur decimis dare nolentes, statuimus; ut juxta Dominis pape praepcta admoneantur semel, secundo & tertio* (according to the High Commission before given out by Will. 1.) *ut de grano, de vino, de fructibus arborum, de fructibus animalium, de lana, de agnis, de butyro & Caseo, de lino & Canabe, & de reliquis que annuatim renovantur, Decimas integrè persolvant;* or if not, *Anathema.* A full and plain Law, speciatim for Corn, Wine, Fruit, breed of Cattle, Wooll, Lamb, Butter, Cheese, Flaxe, Hemp, and all that grows and reneweth yearly, &c. and of what power in the state, may be guessed both by from what before, where the Superior Powers had joyned to intrust the Church in such matters (which implies their authority still;) and further here the K. and his son gave the present countenance of their persons to patronise and establish it. And heed also the *Duene's* supposed in the beginning, they were not now so much willed to be *payable* as shifsters to be brought in to *discharge* of known *dutie.* Elsewhere also in the same (1) Author, Hubert Arch. of Can. kept a Synod at York the Tuesday after Saint Barnabies day, 6 Rich. 1. where one of the binding results of Council speaks thus: *Cum Decima sint tributa egenissimum animarum, & ex praecepto Domini dari debeant, non est reddentis eas diminuere:* Therefore all to be paid without any diminution for Fermage, of which before, entirely. And much severity is again in another (2) Provincial of the same Hubert afterward, with Excommunication to those should withdraw anything to pay the Harvest-mans wages, or the charge of new-broke grounds, or not to the Parish Church, &c. But because this meeting was against the Lord Chief Justice his Prohibition, and so had not the authority of the secular power, I pass it over: though then it were of some doubt whether such meetings were valid, which is since clearly resolved that they are not, by the Statute 25 Hen. 8. 19. And so for

(1) Par. ead. pa.  
75

(2) In ead pa.  
808.

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another (1) Canon against whether Templars or o- (1) Ib. Pa. 80.  
thers should receive Tythes from Lay-hands, in the same Au-  
thour.

To some time of Hen. 2. is referred a Council Lateran under Alex. 3. limiting the former liberty of paying to Any Church, to the Parochial, as fitteſt to have benefit, and neareſt to take the dues up: though later and quicker apprehenſions remove the ſcene to Innoc. 3. who in K. Johns time expressed his ſingle will onely from the Lateran Church. This gave the miſtake, or might well. M. Selden has it from the (2) print, and the (3) Lo. Cook from the more authen- tique Roll in the Tower, ſpeaking fully what a papall Con- ſtitution might, and no more, thus: *Pervenit ad audiētiam noſtrām, quod multi in Diocēſi tua Decimas ſuas integras, vel duas partes ipſarum, non illis Eccleſiis in quarum Parochi- is habitant, vel ubi pradia habent, & à quibus Eccleſiaſti- ca percipiunt Sacra-menta, perſolvunt, ſed eam aliis pro ſua diſtribuunt voluſtate. Cum igitur inconveniens eſſe videa- tur, & à ratione diſſimile, ut Eccleſia qua ſpiritualia ſe- minant, metere non debeat à ſuis Parochianis temporalia, & habere: Therefore proceed according to the Canons, and ſee obedience yeelded by Church-cenſure, &c. Dat. Lateran. Nonas Iulii.*

Here, they ſay, was first a Parochial Right eſtabliſhed: And if ſo, a Right; which I think none will deny, and is all I contend for: and the Lord Chief Justice grants it his way; though not by force of the Decretal, yet as Juſt and Right it was allowed, and ſo became *Lex terra*. Any way ſerves the turn, and if the Position, much more the Suppoſition: If a Parochial right, then a Right, at leaſt. Review ſome of the words: to which purpose, The grievance complained of was, that Many did not pay their whole Tythes, *Decimas ſuas integras vel duas partes ipſarum*—to their own Mi- niſter, but at pleasure: So they paid, the thing was done, And this the height of what I reach at.

To the ſame Kings time alio I refer another Decretal ſent hither from Innoc. 3. to the Bishop of Ely, which had no doubt the ſame force here, not for right of Tythes (which

remem- Deſer. Gregor.  
Lib. 3 cap. 28.  
col. 1230. Edit.  
Taurin.

remember had been before established, and was now but made Parochial, More then To Tythe, To the Parish Church, now growing as common as to enjoy,) but to satisfie a doubt that might arise about the manner of Tything, and wils no deduction should be for Mils and Ponds : ( And still remember also by what immediate consequence the supream power went on confirming All, whereof we read no contradiction) *Pastoralis Officis, &c. Explicari postulasti utrum quis possit de molendinis & piscariis necessariis expensas deducere, priusquam solvat decimam ex eisdem, sicut est in negotiacione concessum?* But it is long, and I refer to it. The forain power does somewhat againe here blemish : but remember again too what before, and adde the so often mentioned confirmation to us of Hen. 8. If a steward can do nothing, yet if a Lord ratifie, the Act is good: If the Chaplin be over-bulie in a family, yet if the Master confirm, now 't is valid, though the thing were besides his Cure : So if the Pop medled with that he shold not, the King and State looking on, and not contradicting but consenting and approving; Here seems now a consummation of all-sufficiency of power at the first, and time going on to ripen what at first production was but raw, a growing up to all perfection. And so in that which next follows which I take to be of the same to the same, wherein resolution was given about new-broke grounds, supposing, I understand the Tythes of a place to be payable to a person, or Church out of the Parish, who should then have those new Tythes ? 'Tis answere in favour of the Parish Church there, That Church ; unless the forainer can shew a very fair plea for them : *Cum enim perceptio decimarum ad parochiales Ecclesias de Jure communi pertinat, (so far it was gone then,) decime novalium que sunt in parochiis earundem, ad ipsas proculdubio pertinere noscuntur, nisi ab his qua alias percipiunt decimas, rationabilis causa offendatur, per quam appareat novalium ad eas decimas pertinere.* Sith of Common right Tythes did belong to the Parish where they grew, The new-broke grounds must tythe thither also, unless very sufficient reason can be shewn to the contrary : This the substance.

But the strongest and most vigorous Constitution which with life and power hath a fted among us, and indeed was the late seen and looked upon Rule and Law to guide All, was that (1) Canon of Rob. Winchelsey, as it is usually sty-  
led, though *Lyndwood* (the letter forth) says he found it in some Books ascribed to Boniface (of the same See,) or as in one very ancient copy, *Constitutio communis Episcoporum congregatorum apud* (2) Merton in *Communi Concilio*; as if so, it was the stronger, an act of the whole Convocation. But whose soever it was, it was about those times. (Remember Rob. Winchelsey (3) entered his charge Anno Domini 1293. about 19 Edw.1. and (4) ended it about 1312, and 4 Edw.2. and so we are, as we took leave, a little without the strict bounds of our method, behither *M. Charta.*) The words are as followeth; (and I English them for the use of every Reader.)

*Quoniam propter diversas consuetudines in petendo decimas per diversas Ecclesias inter rectores Ecclesiarum & Parochianos suos rixa & contentiones, scandala & odia maxima multo tiens oriuntur. Volumus & statimimus quod in cunctis Ecclesiis per Cantuarientem provinciam constitutis uniformis sit petitio decimam & preventnum Ecclesiarum. In primis, volumus quod decime de frugibus, non deducatur expensis, integrè & sine aliqua diminutione solvantur, & de fructibus arborum, & de seminibus omnibus, et de herbis horum nisi parochiani competentem fecerint redemptionem pro talibus decimis. Volumus*

Whereas by reason of divers ways of tything in divers Churches, strife and contention are wont to arise between the Church-Governour and his people; we will and appoint, that through the Province of Canterbury there be this uniform way of Tything. First, wee will that Tythes be paid of Fruit without any deduction of charge intirely, and without diminution, (so reaching in an order about the charge of Fermage, spoken of before, and preventing that exception;) and of fruit of trees likewise, and of all seeds and garden hearbs, unless the Parishioners

(1) Lyndwood  
Constit. provinc.  
lib.3 tit. de  
mis.

(2) And so it u  
alio in Pupilla  
oculi, part. i cap.  
3. says M. Selden.

(3) Polyd. Virg.  
Histor. Anglic.  
lib.17. pa. 324.  
(4) Id.lib.18.  
pa. 32.

ners will make some competent exception for them. Also we will and appoint, that Tythes be required of hay, (or green grals, if it be cut to spend, says Lyndewood in his Glosse) wherever it grow, in greater Meadows, or lesser, or in the High-ways, and that it be paid as is best for the Church: For breed of Cattle, as, touching Lambs, we appoint that for sixe and below, so many half pence; if there be seven, the seventh shall be tythe, yet so, that the Church-Govenour receiving the seventh, shall pay 3 half-pence to the Parishioner: He that takes one of eight, a penny, one of nine, a half-penny; or let the Rector stay for the tenth, if he had rather, to the following year. And he that so stays, let him always have the second or third best of the following yeare, and this for his stay. And so is it to be understood of the tenth of Wooll. But if the Sheep depasture one where in Winter, another where in Summer, the tythe is to be divided. In like manner if any one shall buy them in the middle of the year, and it be known from what Parish the sheep come,

& statuimus etiam quoddam de fænis ubiunque crescant, sive in magnis præceptis in parvis sive in Chimiæ exigantur, & prout expedit Ecclesie per solvantur. In uirimentis autem animalium, scilicet de agnis, statuimus quod pro sex agnis infra sex oboli dentur probatima: si septem sint agni, numero septimus agnus den pro decima rectori: ita men quod rector Ecclesie & septimum agnum recipit, in obolos in recompensatione solvat parochiano à quo dam illam recepit. Qui dum recipit, det denarum Qui vero Nonum, let oboli parochiano: vel expecterat usque ad alium annum in plenarie agnum possit recipi si maluerit; & qui ita expectat semper exigat secundum agnum meliorem vel tercium ad minus de agnis secundi anni, & hoc pro expectatione primi anni. Et ita intelligenda est de decima lana. Sed si in alibi in hyeme, alibi in estate nutriantur, dividenda est doma. Similiter si quis melius tempore emerit vel vendidit oves, & certum sit à qua parochia illæ oves venerint, & runderem dividenda est decima, sicut de re que sequitur domi-

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domicilia. Si autem incertū the tythe is to be divided, as fuerit, habeat illa Ecclesia of a thing belonging to several places; but if it be not known, let the Church have temporis tempore tonsionis inventari. De lacte vero voluntus quod decima solvatur the benefit where they are dum durat, videlicet de Caseo where the tythe be paid as it ariseth, that is, in Autumno & hyeme: Nisi of Cheese, so long as it is parochiani velint pro talibus facere competentem redemptions, & hoc ad valorem decima & ad commodum Ecclesie. De proventibus autem molendinorum, volumus quod decima fideliter & integrè solvantur. De pasturis autem & pascuis tam non communibus quam communibus statuimus quod decima fideliter persolvantur, & hoc per numerū animalium & dierum, ut expedit Ecclesie. De piscationibus, & apibus sicut de omnibus aliis Bonis juste acquisitionis que renovantur per annum, statuimus quod decima solvantur & exigantur debito modo. Statuimus etiam quod decima personales solvantur de artificibus & mercatoribus, sc. de lucro negotiationis. Similiter de Carpenteriis, Fabricis, Cementariis, Textoriis, Pandoxatricibus, & omnibus aliis Stipendiariis Operariis; ut videlicet dent decimam de Stipendiis suis, nisi

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thing certain toward the Light in the Church, and this at the Church-governors choice —

*Stipendiarii ipsi aliquid certum velint dare ad opus vel ad lumen Ecclesie, si rectori ipsius Ecclesie placuerit —*

Then (after some words of Mortuaries.) But because there are many that refuse to pay their tythes, we will, that Parishioners be warned once, twice and thrice, (which was the number of esloyns allowed in the Conquerours Charter, as before) to pay their tythes to God and the Church truly. Or if they refuse, they be first suspended from entring into the Church, and so bee compelled by Ecclesiasticall censure, if need be, to pay. Or if they require release or absolution from suspension, let them be sent to the Ordinary of the place for it, and duly punished. And as to the Church-Governors themselves, or Vicars, or Chaplains by the year, who for fear or favour of men, setting aside their awe to Heaven, do not effectually require their tythes aforesaid, let themselves be suspended till they pay a mark to the Archdeacon of the place for their disobedience.

*Sed quoniam inveniuntur multi decimas sponte dare nolentes, statuimus quod parochiani moneantur primo, secundo & tertio ut decima Deo & Ecclesie fideliter solvant. Quod si se non emendaverint, primo ab ingressu Ecclesie suspendantur, & sic demum ad solutionem decimarum per cesuram Ecclesiasticam, si cesset fuerit, compellantur. Si autem dicta suspensione relaxationem vel absolucionem petierint, ad Ordinarium loci mittentur absolventi, & debito modo puniendi. Rectores autem Ecclesiistarum seu Vicarii aut Capellani anni qui predictas decimas pradicti modo propter formidinem habminum seu favorem, timore Dei postposito, (ut predictum est) cum effectu non petierint, pena suspensionis innocentur donec dimidiam marciam argenti Archidiacono loci persolvant.*

I have both transcribed at length, and translated this, as I said, because it is the chief Law, whereupon (immediately) the

the dueness of tythes is grounded and known by the Canon: as to the Regulation of the manner of collecting this prevailing, though not as to the dueness it self; for this, as hath been shewed, was secured before, and therefore the law begins with supposition, and blame, that men did not Pay as they ought, which was here intended to be remedied. And for the sufficient authority hereof, we need not much doubt; for Lawyers and Men were awaked both then and ever since, & would not through ages and generations have been frightened or cheated with meer empty shews of Paper Canons into a foolish & childish awe of what was but terrible. They knew no doubt, from time to time there was strength enough (with help of former grounds) to carry things on and force them, if any rub of opposition were laid in the way, which made them pick a vertue out of that was indeed a kinde of necessity, and doe with seeming willingness, what if they would not, they must and might have been compelled to. Other Constitutions are also about the same time, but not of so great moment; yet, because they have some force, our niggardize shall not suppress what may be pleasing, profitable, or in any regard useful. The next is about Cattle removable from place to place, and hath vertually sixe propositions.

*Quoniam ut audivimus, &c. Nos viam pacis preparare volentes statuendo definiendo statuimus, quod ad Ecclesiastis in quarum parochiis oves à tempore tonsionis usque ad Festum S. Martini in hyeme continuè pascuntur & cibant, decima lana, lactis, & casei ejusdem temporis, licet postea amota fuerint ab illa parochia & alibi tondeantur, integrè solvantur. Et, ne frans*

1. Where sheep are continually feeding, and folded from shear-time to S. Martins day, there the whole tythe to be payable to that Church, and caution given accordingly before the removal.

2. Within that space if they change from place to place, each Church to bee satisfied for the time, not re-koning of less then thirty days; Or if they feed in one place,

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place; and fold in another, then fiat in casu premisso, prædicto divide; and so after rateably.

3. Milke and Cheese to be paid where the Beasts feed and couch: If these in severall places, then to divide.

*Quod si infra predictum tempus addiversarum parochiarum pasturam transferantur, qualibet Ecclesia pro rata temporis portione decimam percipiet earundem, minori 30 dierum Spatio in rata temporis minimè computando. Si vero per totum tempus predictum cubant in una parochia, & pascantur continue in alia, inter ipsas Ecclesiæ decima dividatur. Quod si post Festum S. Martini ducantur ad pascua aliena & usque ad tempus tonsionis in una vel diversis parochiis, sive in propriis pasturis dominorum suorum sive alterius cuiuscunque pascantur, habita ratione ad numerum ovium pascua astimentur & secundum estimationem pascorum ab eorum dominis exigantur decime.*

4. Lambs, Colts, &c. to be paid, habita ratione ad loca diversa ubi gignuntur, oriuntur, & admoram quam traxerint in eisdem: with regard to where they were bred, kept, and stayed: Milk, where the quantity is small, and so for Lambs, Colts, &c. according to the usage of the place.

5. What sheep live to S. Martins day, to be accounted for, though they be sold to the Shambles, or die after.

6. If shorn in any Parish, the Wooll supposed there due, unless it were made appear to the contrary.

This I said, is but supplementall, for parting strife. Men would be ready to require their dues, and every honest man should be as ready to pay; but occasions requiring them to chop and change before the year came round, this was an equall and conpcionable both provision and prævision, to set down before-hand a fore-appointed rule what either should expect, and so part strife before it was begun. A summary confirmation of all which before, and more distinct recitation of some things, is in another of the same Authour following:

Sancta

*Sancta Ecclesia, &c. Cum  
Sacro eloquio jubente de om-  
nibus qua novantur per annū  
nullo tempore excluso decima  
fuit cum omni integritate &  
absque diminutione solvende,  
Liceatque unicuique capella-  
no parochiali, Rectori sive Vi-  
cario Parochianos suos per cen-  
soram Ecclesiasticam ad solu-  
tionem decimarum compellere,  
Omnibus. & singulis Rectori-  
bus, Vicariis & Capellanis  
Parochialibus & Ecclesiariis  
Parochialium Curatis per no-  
stram Provinciam Constitutis  
in virtute obedientie manda-  
mus firmiter injungentes, qua-  
tenus diligenter moneant &  
efficaciter inducant, & quilibet  
iporum in Parochia sua  
moneat & inducat, quod pre-  
dicti Parochiani omnes & sin-  
guli integrè & sine diminu-  
tione decimas inferius anno-  
tatas Ecclesias suis persol-  
vant: sc. decimam lactis à*

pture all that renews yearly is  
to be tythed, and it is lawfull  
to compel men thereto; we  
command all Church-Gover-  
nours and their Substitutes to  
move and inforce all under  
their powers to this duty: that  
is, to pay of milk, of the pro-  
fits of wood, of mast if it be  
fold, of stews, ponds, rivers,  
pools, trees, cattle, pigeons,  
seeds, fruits, beasts of warren,  
(that is, under known custody  
and guard, for so the word  
imports) of hawking, gardens,  
orchards, wooll, flaxe, wine,  
grain, peat, swans, chicken,  
geese, ducks, egges, hedge-  
rows, bees, honey, wax, mils,  
hunting, handicrafts, mer-  
chandise, lamb, calf, colt, and  
all other revenue without de-  
duction of costs, &c. or if not,  
to proceed to Suspension, and  
Excommunication, &c.

*primo tempore sua novationis, tam mense Augusti quam  
aliis mensibus, de preventibus etiam boscorum, pannagiis  
sylvarum, & ceterarum arborum si vendantur, vivario-  
rum, piscariorum, fluminum, stagnorum, arborum, pecorum,  
columbarum, seminum, fructuum, bestiarum guarenarum, au-  
cupitii, ortorum, curtilagiorum, lana, lini, vini, & gra-  
ni, turbarum in locis quibus fabricantur & foduntur, cy-  
gnorum, caponum, ancarum, & anatum, ovorum, thenicci  
agrorum, apium, mellis, & cere, molendinorum, venatio-  
num, artificiorum, & negotiationum, necnon agnorum, vi-  
tolorum, pullorum equinorum secundum eorum valorem, &  
omnium*

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*omnium proventuum rerum aliarum de cetero satisfactionem  
competentes Ecclesie quibus de jure tenentur, (harping still  
upon the right and that granted) nullis expensis ratione  
præstationis decimarum deductis seu retentis, nisi tantum a  
præstationis decimarum artificiorum & negotiationium. Quid  
si monitionibus suis parere contempserint, per suspensionem.  
Excommunicationis & interdicti sententias eos ad præstatio-  
nem decimarum hujusmodi compellant.*

These three Constitutions (Decrees, Statutes, Laws, Orders, they were for payment, call them what you will,) were in one mans time, and about the parting of *Edw. 1.* and *Edw. 2.* Raigns: which (it seems) did not yet so remedy things as to prevent all future broyls. A thing impossible: Contentions will last while the world: Laws can never reach their full intended force and operation in quieting strifes, in calming the storms of mens rage and wrangling passions *and wholly*, but ever and anon they will break out to mischief and disturbance: the Root is in our corrupt nature, who will not but have Spring at some time of the year or other to shoot forth and fructifie unto grief and trouble, in resemblance of the earth, cursed for our sakes into a proneness to weeds, and most Natural feracity of Briars and Thorn. We shall finde this disposition generally received through the world, that most men are more quick and nimble of the receiving hand, then of the giving, and though they better words of the Lord Jesu, That it is more blessed to give than to receive, yet they will take the contrary by a bold invention, and think it better howsoever for them, to Receive than to Give. Of the same extent is also this Constitution of things, That where many are to pay known dues, some will bee found backward, standing off as far as they dare to necessity constrain them to come in; Which makes it a rare instance but if any be to receive never so known dues, some will fall short, at least there must be wrangling with a multitude, and this shall be hardly avoided with some, whosever hath to deal with many. A fruit of our corrupt nature mourn we for it in private, and sorrowful mischance to many of all mankind, condemned hereby to live as it were

fury of a tempest, in the flames of passion burning and renewed to the mutual torment of One another : A great disturbance of the quiet and peaceable world, and unfortunate occasion of many troubles to many , who being of themselves not disposed to trouble , are yet (by the things they have to deal with) forced beside their nature, and by the cunning craftiness of those that lay in wait to deceive ( whose versatile shifts are hard to be avoided) often put upon this Dilemma, of either gaining contention, or losing right ; and if there be but one of a multitude disposed to wrangle, he that hath to deal with All, must oppose that man and bear half the blame ; and as suits and troubles increase with his unjust vexation, his seeming guilt increases also. If this were not , we should have much toward a quiet and thereby happy world, approaching the simplicity of the golden age , with return of its peace, calmness, meekness, love, and a constant serenity of all things ; A bleising so highly enriching, that it seemis the wise Providence above does not think fit to trust , or rather tempt us with , because perhaps beyond our power to manage or bear so great a happiness. Which aptnes to contention shewed it self soon after the Canons formerly made and mentioned, divers seeking shifts to evade and disappoint the clear intent of those plain and well-meant Laws, so plain, one would think, that there were no way left to delude or shift from the meaning and purpose laid forth in such plain and perspicuous expressions : Which awaked also ere long after that , the watchfull prudence of him late then in highest place of power and trust for such things, to cast the belt he could to advance ready justice, and yet further prevention of all disappointments thereof. In time it follows (as in place it goes before, in the same *Lyndewood*) those we have given , and was intended to strike off their exceptions, who could not deny their dues, or to set them out, but (1) they

do ejus, & universi qui habitant in ea, decimas in signum universalis Dominii sibi reddi praceperit & pro suo cultu easdem Clericis Assignavit, aliquando malicie impedient, impeditive faciente vel procurant vires Ecclesiasticos ad quos spectat perceptio decimorum eorumque servitores quo minus liberum ingressum & egressum in prædia & à prædiis de quibus hujusmodi decima proveniunt habent possit, &c. Alii etiam nisi prius chirothece vel calige seu quicquam aliud eis dentur, seu promittantur, decimas hujusmodi asportant & consumunt, asportante & consumi faciant, seu aliquod dampnum inferunt inferriue faciente in eisdem. *Synon Mephæm*, cap. Quia quidam.

would

(1)Alii vero non attendentes quod Dominus Omnipotens, cuius est terra & plenitudo

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would hinder those should fetch them from coming upon their ground, without which they could not obtain them effectually, unless they had gloves, stockings, or some other such bribes given them for the quiet delivery of what they acknowledged due; which if they had not, they would pollion or corrupt, or one way or other disappoint the true and rightful owner. O malice, whether wilt thou! O guile, when wilt thou leave working! O fraud, deceit, and wretched covetousness, when will you cease your injurious combinations! O cursed craft, and griping, shifting, over-reaching worldly-mindednes, when will you give over to disappoint the best-meant Laws of men, sith your use hath bee

(1) Διασπίγων  
τας αδεικυπί<sup>ς</sup>  
τος εὐθείας.  
Crooking <sup>bu</sup>  
straight ways.  
A.D. 13. 10.

of old to pervert even (1) the Righteous ways of the Lord. The remedy was here, as in former cases, the severest Excommunication: *Nos igitur perversorum damnablem consiliis salubre remedium imponere cupientes, nihil novum statuentes, sed antiquorum Canonum statuta in medium aducentes,* (mark that, no innovation) *universos & singulos hujusmodi instigatores, impedidores, & alios supradictos, &c.* to be fast locked under the heaviest of Church-Censures, <sup>not released from that Bond of God, save at the house of death, or upon promise of amendment with satisfaction.</sup> If this helped not all: The wit of malice that pierceth deep, found out another nest of manifold devices to hinder the course of right (2) by these four disturbances: 1. Paying but the Eleventh for the Tenth, in regard of Summer-charges, &c. 2. Dividing but not marking out the sheaf, <sup>as</sup> (3) then molesting the taker of it away as for theft. 3. Resting the workmen for taking the convenientest way. 4. Forbidding to take what was ready, till the whole field were rid, which occasioned much spoil: Against all which is drawn the glittering sword, of which before of Church-censure, and the power used (lavishly) enough which should not be used upon trifling occasions. Excommunication is a heavy doom, 'tis hard it should be laid on for trifles, as the petty things of this world, or the powers of the world to com-

(2) Ioan Strat-  
ford tit eod cap.  
Erroris damna-  
bilis

(3) The remedy of  
the grievances  
might be that  
which King Ri-  
chard after enten-  
ded to graue by  
his gracious Com-  
mission of a Rich-  
ard 2. cap. 14, remem-  
bered below, pa.

drawn forth to vile and sordid profanation, degraded below their due value, and highest worth to serve any ends which are not spiritual.



## C H A P. XX.



Ave we yet done? no; we are now  
bus to begin another tedious wrang-  
ling controversie about Tythe-wood,  
and this indeed lasted long with much  
violence between the parties contend-  
ing, till at last it settled (wel near)  
in the binding statute or *Sylvacadna*.  
The grievance on the Churches part  
was (1) this; That whereas leis charge

was in manuring for Woods, and longer expectation for one  
Harvest in many years, yet disbursements for the felling, &c.  
were claimed to be allowed when it came, before the Tythe set  
out, and the Countrey, which was worst, had a custome for  
this unreasonableness. No such matter: The continuance  
of the disease did rather call for a more speedy remedy, which  
it had, and therefore is first determined what *Sylva cadua*  
was; *Quia cujuscunque existens generis arborum in hoc ha-  
betur ut cedatur,* ('twas let grow to be cut,) & *que etiam*  
*succisa rursus ex stirpibus aut radicibus renascitur,* (being  
cut, it grew again afresh:) and then that All should be ty-  
thed as it was felled; or if not, proceed to censure as before.  
But this it seems the State would not allow; for the incon-  
veniences emergent occasioned that complaint put up by the  
(2) Commons then sittig in Parliament for remedy: And  
so the year following, sc. 18 Edw. 3. and three years after  
again, sc. 21 Edw. 3. and four years after that, 25 Edw. 3.  
and yet not full remedy till about twenty years after, scil.  
45 Edw. 3. where ordered in Parliament, and (3) ordained:  
Item, at the complaint of the great men and Commons,  
singing by their Petition, that wheras they sell their great

(1) T it. eod. cap.  
Quanquam ex  
solventibus.

(2) Selden H. 8.  
cap. 8. sect. 28.  
& sequ.

(3) 45 Edw. 3. ca.  
3. Pulton pa.  
196.

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Wood at the age of twenty yeares, or of greater age to  
Merchants to their own profit, or in aid of the King in  
his wars, Parsons and Vicars of holy Church do impleas  
and draw the said Merchants into the Spiritual Court so  
the Wythes of the said Wood in the name of this wox  
called Sylva caudua, whereby they cannot sell their Woods  
to the very value, to the great damage of them and of  
the Realm, It is ordained and established, that a Prohi  
bition in this case shall be granted, and upon the same an  
attachment as it hath been used before this time. This  
was intended a final end, but it seems was not: some doubt  
sprung out afterward upon pretence this (1) was not an Act,  
but an Ordinance, whence a return of the former circulation  
of things; occasion given, discontent arising, dislike, trou  
ble, and complaint for remedy. How it was pacified I finde  
not, but have heard that the Statute (or but Ordinance) pre  
vailed: A signe that it was strengthened with some (2) ad  
ditionall sinew of new and fresh authority, forasmuch as wh  
we see prevailing in Law, we may well suppose some Decree  
to have ushered the lawfulness thereof; and if upon altera  
tion, the scales hanging even on both sides, one does at hit  
evidently preponderate, some weight of authority may be  
thought likely to have been thrown into that scale we see  
settle and keep the advantage, and That is it there keeps and  
settles it. So likely it did here; and in and from this agitation  
of things, and so as they did settling, this seems observable,  
and not to be passed over: The Temporalty did, we see, in  
terpose to alter and change what the Church had decreed  
and settled by her best power; Their temporals were their  
own, and they would not endure themselves to be unreaso  
nably incroached upon by any forced impositions, which  
made them move again and again, and would not cease till  
their grievance had remedy; I doe not finde they did the  
like in other cases, bound up fast by other the Churches de  
crees before; but let them pass; Therefore (by comparison)  
I judge they approved what they did not dislike; Their (3)  
silence gave consent, and so they suffered themselves to be car  
ried along with that stream of power they saw come from the  
Church

(1) Selden ubi  
sup. scđ. 33.

(2) Res: there  
was a Position  
jus up in the next  
Parliament, 47  
Edw 3 and by or  
der thereupon a  
Prohibition to be  
formed in Chan  
cery, which was  
formed, and that  
has quieted all to  
this day, Co. Inst.  
2 pag. 643.

(3) Qui tacet,  
confiteatur vide  
tur. Reg. Iur.  
Can. 43. Scienti  
& consentienti  
non fit injuria  
neque dolus. Reg.  
28.

Church to carry on what it undertook, and to make a Convocation Act strong enough in this case to settle a temporall sort of things that had a touch (in that they were annexed to, and the support of Gods service) of spirituality. (For all along I desire it may be carried in minde, The Consent of men is the firm and only bottom whereupon temporal Right and Dominion do rest here : Men have agreed, Therefore Thus it was ; Which was here and thus compleat and perfect.) If the Temporality had not stirred at all, it had been some signe they might not : If they had stirred and not obtained, the victory might have seemed over their power, not their Right, and so the use of their discretion to have stayed for their right and moved by their power for it, in a time when they were likely to obtain : But sith they stirred, and obtained, and had redress reall and effectuall, A signe they might at any other time, A signe they might have obtained, A sign that in other things they let silently and quietly pass : Which sith they did not, Therefore they consented, Therefore they allowed, Therefore what was done was authoritative by Them ; And so this whole disposition of things (even all Lindewoods Collection) had their Negative implied confirmation, in that they did not hinder, And by Consequent even by them, (save in the case of *Sylva cadua*) the Canon was Law, English Law, and approved by all, in that none cast a rub in the way to hinder, whereas they might, and in other cases did, But Here they did not. The same Authour hath other things dispersed, (for these were hitherto together under one title,) as, where (1) Prohibition is to sell any Tythes before the 25 of March ; After, the Rector might declare his will of the fruits, to pay his debts, or satisfie legacies, which was ordered in Hen.3. time : And elsewhere (2) they were to be Excommunicate who suggested by Calumny to the King and his Judges, that the Ecclesiastical Justicers held plea of Advowsons, Chattels, and other (temporal) things belonging to the Kings Court, *Cum iisdem prelati & Judices super decimis, peccatis, & excessibus suorum subditorum sive Jurisdictionis officium, prout ad eos pertinet, exercent* ; They did but do their duty and discharge

(1) Lib. 1. tit. de  
Consuetudine. c.  
Nullus Rector.

(2) Lib. 5. tit. de  
Sententia Excom-  
muni. cap. Cum  
fepus.

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their office, medling of those things that did appertain unto them, tythes among the rest. Neither was this the leſſe true, or the judgement of it of ſo credit, because 'twas ſpoken of and by themſelves: The thing is evidently and notoriouſly known, nor ihall want the recognition of their jealous neighbours, the other Courts, who cannot but acknowledg the Jurifdictions here ſevered and cut out as it were impartially and by a thread; nor could a more proper and formal eſſential difference have been found out between the one and the other then this, That the one did handle *De jure Patronatus & catallis, &c.* as it eught, universally of the things of This world, and the other of the rest, and tythes among the rest.

Which lets us fitly onward to the other, the *Executive* part of these *Legislatives* hitherto, and how they had their force in the proper place designed thereunto for recovery of these things thus made Due and ſtated according to theſe Laws; but hereof I have not much to ſay. I was always stranger to their proceedings, nor as to gain or loſe, did I ever do or ſuffer, what might import favour or wrong, to thereby holpen or hindred at any time; Only this I have heard ſpoke out by the clear and loud fame of the world, The here mens rights were tried, and examined, and loſt, and recovered: Pleas were heard, and ſentence given, and the ſentence did, or ſhould, or might have found obedience. If all had not been right and ſquare, as we ſay, exactly juſtifiable, If there had been any remedy at *Westminster*, or am where else that could have been thought of, If the Goddess *Themis* had had any Asylum or refuge upon Earth whereunto covetous and carnal men might have had recourse in their fears, with any hopes of protection in those affrighting tempeſts, that like ſome kinde of lightning melted their gold and silver in their purſes, yea, out of their purſes, No doubt but ſuch desired ſhelter would have been made to with greates diligence and truest endeavour: Questionleſs in what dark or remote corner foever it had hid it ſelf above ground, men would have both ſought it carefully, and found it ſuccesfullly: Undoubtedly every one man would have told his neighbour,

bour, and he another, these more, and by degrees all; The information would so soon and luckily have propagated it self, that no manner of doubt should now have remained, whether such a place had been or not; the path would have been more trodden to it, then to any Church or Marker-place in *England*: But they knew there was none such, They knew all was there, of this nature, (while it was,) firm and answerable; They knew those sentences were there (in their kinde,) by the approbation of all men, and Authority of the Law, valid as those at *Westminster*, *Puls a digno cere cautus,* *quid solidum crepet*: They knew, Try who would, There was that solidity. Civil Laws did approve, successions of Parliament had allowed, the King had given leave, the whole State had given allowance of those proceedings, and above all, the Law held them just and according to Law: And so unless her self would contradict her self, the head fall off from a principall member, or Justice oppose Righteousness, They (all the Magistrates, Powers, Laws, and Lawyers of *England*) knew, and could not but pronounce a just sentence in that Court for Tythes to be just: were it for sheaf, lamb, fruit, venison, the tenth Thrave, or but a Tythe-lock of wooll; What a sentence did at *Westminster*, that a decree did there; What a Verdict and Judgement upon an Assise, That a conclusive determination upon mature deliberation did here; and What sufficient ground of Right that gave of Dominion, that a man might thence claim a piece of ground or debt of money, *Hic codex est meus, Hac dominus est vestra*, By equall vertue of a like sentence here, this due charged upon every parcel of land or herd of Cattle had declared right, yea, and judgement for it, in order to execution; Or if any would not come and submit, *vocetur primò, & secundo, & quod si nec sic ad emendationem venerit, Excommunicetur*, as *tertiò*; leave was given in the Charter.

Thus as to the power intrusted with the Church, I have now almost done; we see what the Supream Authority gave in Commission, we see what use was made of it, we see what connivence or more there was of all other powers, and what obedience likely; but of this the less being unacquainted at

Offices:

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Offices: We cannot in short doubt but the Church made Laws about Tythes, that they caused them to be done to execution, that the State enabled them, that the whole Civill Power more then connived or permitted, appointed, authorised, and strengthned that power whereby was acted thus according to office and duty on one part, and leave, desire, expectation, and full trust on the other: The result of all doubtless a full right, a clear, assured, undoubted, fast, safe and honest title, as good as Any had to Any thing, and the evidence of things may discharge the superfluity of more walt words; If any right were anywhere, it may doubtless be reasonably thought to have been unavoidably, *Here, Sure, and Thus.* There remains yet one onely thing more, somewhat in intention, was never quickned to full A&t, but was purposed to give much in little, the life, spirits, and virtue of all before in the new intended to be purified Canon Law by Hen. 8. authority. A thing often glanced at, but here fit to be represented together, and briefly and summarily was therefore thus:

(1) 25 Hen 8 19.

(2) Provided al-  
ways, and be it ena-  
cted by A: thority  
aforesaid, that  
thu A&t for Recov-  
ering of Tythes, ne  
any thing therein  
contained, shall  
take force & effect,  
but on y until such  
time as the Kings  
Highnesse, and such  
other 22 persons,  
which his Highnesse  
shall name and ap-  
point for the man-  
king and establish-  
ing of such Law,  
as his Highnesse  
shall confirm and  
ratifie to be called  
the Ecclesiastical  
Laws of the Church  
of England, And  
after the said  
Law to ratified  
and confirmed as aforesaid, that then the Tythes to be paid to every Ecclesiastical person, according to such  
Law, and none otherwise. 27 Hen 8. chap.20.

needed

needed for Tythes, Proviso was thought as fit to be added, that it should obtain but till the promised reformation: In the mean while time slipping away, and little or nothing done in the business under nor after Parliament, there was need to have the power (1) renewed for longer date, which was done once and again, and so at length for the whole (2) time of the Kings life. K. Edw. 6. also (3) continued it for three years in his time, All repealed by (4) Queen Mary, but revived by their (5) Maiden Sister. The fruit I find no less then the work in some sort done, and published in the Queens time by J. F. but reprinted about ten years since, under the title of *Reformatio legum Ecclesiastiarum ex authoritate Regis Hen. 8. inchoata, deinde per Regem Edw. 6. proiecta ad antiquaque, &c.* Londini 1640. Where heed the title, It was but *Reformatio legum Eccles.* in what form soever the new Mint should have come forth made of the old metal; Not *Inventio, Rogatio, Interrogatio, Promulgatio* of any thing anew, but its very self, *Reformatio, Confirmatio, or Novatio*, a new setting out of what had been before: Not the sending for new Tables to *Athens*, or such godly and costly proceedings as the poor blind *Indians* must make, (rising from the flat level) if it shall please God at any time to give them *repentance to the acknowledgement of the truth, that they may recover themselves from the snare of the Devil who are taken captive by him according to his will,* To make their Native Ordinances square and fit into one building, as to the new teachers maintenance; Raising perhaps the tenth fleece from the flock, the tenth lamb from the fold, the tenth sheaf from the shock by a costly devotion, and out of their Own creating unto him a new Right; But to revise and settle that which was, to consider the ways of taking up, remedy the inconveniences, remove the obstructions, and scour the wheels upon which suits moved, still leaving the thing they found, they needed adde no more, but say, Those rights shall be paid that have been. This all they intended, a Reformation, not destruction, which would infer need of a new creation; Not to adde an apple or an aye more, as that Poet said, which I shall always account unjust (unless with much caution limited,)

(1) 27 Hen. 8. 15.

(2) 35 Hen. 8. 16.

(3) 2 &amp; 3 Edw. 6. 11.

(4) 1 &amp; 2 Phil &amp; Mar chap. 8.

(5) Elizab. 1.c. 5.

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ted,) and would not have done for God or man. No not for Religion, which needs not injustice, or that any be put out of his Right for Gods sake; And God be thanked, as things are, and the world has been devout heretofore and devoted, it needs not; Let but God and man have their Due, and Religion is well provided for. We may talk of raising more by fruitfull beneficence, and the good will of men shall move Mountains this way; But let the Law of the Gospel have but our equall justice, with discreet administration of that which is, and it seems not to want already what the world can or need do for its outward sustentation by what was done for it before our fathers were born. Well: this plotted Reformation as 'tis called, (to go on,) was as to the work to be performed, taken into four quarters, and each quarter again into as many Cantons, whereof every one had two Bishops, two Divines, as many Doctors of Law, and so many Common Lawyers, (contributing their powers and endeavours to study, act, and oversee,) and to perfect all. Sir *Walter Haddon* and Sir *Jo. Cheek* were to fit it with ornament for the setting forth, which they did representing it to the world, (and so it is now to be seen,) dressed up in a very fair Robe of curious Romane language: As to Authority published it was with two Manifelors of the two Princes, willing it (1) to be studied and followed in Universities and Courts, 'tis hard to give the reason why it was not; All which was needfull to know, that we might infer of what power and authority is that we shall alledge. One (2) title is, *de Decimis*, having under it nineteen Chapters as followeth:

(1) *Stritè precepientes ut his nostris Constitutionibus vos omnes & singuli tamen in judicis quām in Gymnasio utamini.* Hen. 8. in Epist. praefixa.

(2) Pa. 215.

### Cap. 1. *Decimas esse solvendas.*

*Quoniam Dominus noster Iesus Christus hanc ipse legem sancivit, ut qui doctrinam inter homines conferunt, ex docendi labore praesidia vite metant, & ejusdem Domini nostri testificatione, Digni sunt mercede quicunque sunt in opere;* Porro divinum ius scriptum bovi trituranter cum os obligari non sinat, nobis exemplum divina clementia repetendum est, & valide videndum, ne vel nimia nostrorum hominum avaritia vel negligentia fiat ut Ecclesiarum nostrarum ministri

*justi & convenientes fructus ex sanctissimorum occupatione  
munerum non suppeditentur.*

**Cap. 2. Decime prediales quo modo solvi debent.**

Igitur auctoritate nostra constitutum sit, ut omnes singuli-  
gue subditi nostri, locis & temporibus designatis & legitimis,  
decimas omnium rerum ex pradiis provenientium ministris se-  
ponant, sive fenum sint sive fruges qualecunque quorumcun-  
que locorum, sive Crocus, sive Cannabis sive linum, sive sint  
olera vel arborum fructus, &c. and so on to the exactness of  
the Pharisee to tythe All. Of Mills, Turves, Coles, Quar-  
ries, Pastures, (Agistment cattle I think they mean,) the  
breed of Cow, Swine, Sheep, Mares, Swans, Hens, Geese, Pige-  
ons, Conies, Deer, Fish, Bees, &c. Revising and expoun-  
ding the Act of Parliament a little before made and approv-  
ing it. But because the rest at large may take up too much  
room, therefore take but the Quintessence as it were extra-  
cted in the Contents of the Chapters.

**Cap. 3. Animalium decima annua quomodo juxta nu-  
meri rationem solvatur.** How the tenth shall be  
reckoned.

**Cap. 4. Divisio decimarum qualis sit.**

**Cap. 5. Decima rerum alienatarum quomodo recuperetur.**

**Cap. 7. De Jure Vicariorum.**

**Cap. 8. Quando minister ex proventibus Ecclesie ali non  
potest :** Directing and counselling to all lawfull  
means can be thought on for augmentation.

**Cap. 10. De decimis colligendis in aliena parochia.**

**Cap. 11. De locus qui sunt à decimis liberi.**

**Cap. 13. Decime prediales & personales quomodo sol-  
venda.**

**Cap. 14. Solvendas esse decimas personales.**

**Cap. 15. Proprietarii quomodo decimas solvent.**

**Cap. 16. Decimas utrinque generis solvendas esse,** sc.  
both prædiall and personall, if they arise due from  
the same man.

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Cap. 17. *Causa decimarum inter ipsos ministros non predicitur.*

Cap. 18. *Consuetudo non solvendi decimas invalida sit.*

It might have been convenient to have represented here a full transcription of these things; but there is intimation where they may be had for use, which may be enough, where Brevity is studied. These Provisions of a Law shew clearly what the state then meant, as to Reformation, and even in this particular (if the purpose of the statute had been obtained for abolishing the old Canons,) and how inviolable the right of Tythes should have been. Then by their profound wisdome and discreet piety, which is also better seen by account from these publick consultations then any private informations. The results they were of a severe and searching reformation, wherein as many stones had been moved (hoping thereby to settle others) as in any tumbling Age; and for the distressed Church what men durst do, if it had been judged convenient, needs no other demonstration then what was done: But profound wisdome joyned with much piety, and a conscientiable regard (proceeding in the fear of God) not to destroy what they meant to reform, or to purge out corrupt humours to the death of the patient, made them soberly carefull we see, and tenderly jealous not to meddle too farre here, and for fear of darkness over all discreetly advised tolke none of the oyle be medled with that kept the Parish Lamp burning, but rather gave hope of adding more where need was, (with encouragement to bring it in,) setting open a door to let in other supplies of needfull expence for these Lamps dispersed all abroad, if God should so move the hearts of those that loved the Tabernacle and the light thereof, to bring any offering; To strip all having been a thought of such horrid injustice and barbarous impiety, joyned with Impredicience (as to Religion) and imprudence into the bargain, that in likelihood truth might have been in danger of perishing from the earth by this time, and according to ordinary dispensations of Providence, we have now had little enough of Law or Gospel to take up consultations for the maintenance of

## of TYTHES.

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of, by that the Bible might have been near a stranger, if this had prevailed : But into their soft and tender bosomes, by the Grace of God, such thoughts had not leave and power to enter.

Why the tree thus planted hath not been known to bear fruit, or this new body thus framed, not received to be practised by, is, I said, hard to guess; the best reason I can think of is for want of Parliamentary allowance and subsequent confirmation, for nought else see I wanting : yet as strange that what a Parliament had appointed to be done, and being done, and accordingly, should not have therewith what strength it could give. But so it has been, a dead letter hitherto, one-ly living in the good wilhes of knowing good men, that it were quickned to full life, and the least Ecclesiasticall piece (I call it so in regard of the *materia prima*, out of which it was made, the end whereat it aimed, the things it directs about, and its distinct standing off from the more common or secular,) that, of this kinde, our Common-wealthe hath afforded : Not unfitly reduced to this head of Ecclesiastick, whose proceedings have been such by vertue of due power throughout this businels, that it needs no protection of Hyperbole to excuse that all have either liked or willed ; Kings, States, Parliaments, Judges, Lord, Laws, not sparing their vote of approbation, (to this particular still I mean) and all that have, have looked on either to allow or confirm. With this one intimation more I close up the point, that wheras this new body is not yet it seems authorised perfectly, till it shal be, All the old (including those also I made use of before) are in force by a concluding Proviso of that first statute (25 Hen. 8. 19.) where the whole businels was started. The words are these : **P**rovided also, that such Canons, Constitutions, Ordinances, and Synodals Provincial, being already made, which be not contrariant nor repugnant to the Lawes, Statutes, and Customes of this Realm, nor to the damage or hurt of the Kings Prerogative Royal, shall now still be used and executed, as they were afore the making of this Act till such time as they be viewed, searched, or otherwise ordered and determined

of by the said thirty two persons, or the moxe part of them & according to the tenour, form, and effect of this present Act. But this not yet done, and therefore all the former Canon yet of force till, &c. and that by this Authority.

## C H A P. XXI.



ND hitherto then upon the proper Stage: Let us next look upon the lookers on, and see whether the Neighbour secular powers have either not looked this way, or did nothing, or not in allowance of what there: The Church impowered as before, hath acted as hath been seen, to a full and fast determination

of Right according to what she had in Commission, (or if she exceeded or went too far, was checked, as hath been shewed also:) But now hath the secular state added no collaterall strength, to connive at least, and more at what hath been there done? Surely so: As they have done their own business, Hers also having been taken in by the by, sometimes in direct assertion, oftner by glance and occasionall reflex, but by supposition constantly ever; That supposition also often expressed, as uses to be in collaterall, not purposed mention of things, but never but understood and meant, as may be known by the evidence of things, as they have been done, and are left remembred; Their very (1) silence (if nought else were) implying consent, and suffering the Ecclesiasticall to continue meddling with things of Temporall worth, and not forbidding, being strong evidence that they did allow. Sometimes indeed the transgression of limits hath been questioned, and this the true ground of All Prohibitions

(1) Sub factis autem moraliter venient & non facta considerata cum debitis circumstantiis. Sic qui sciens & pressens tacer co[n]fessere vide ur. nisi circumstantia ostendant quo minus loquatur, metu eum vel alio casu impediri.  
*Gros. de Iure Belli.*  
I. 2. c. 4. sect. 5.

hibitions, when the Church would meddle of things of  
 (1) lay fee, as the general word was, *de rebus tangentibus Coronam & dignitatem nostram*, for then the King would forbid that extravagancy, and stop the proceeding, as reason he should: But if keeping the due bounds, and not going besides the nature of allowed businesse, *in spiritualibus & annexis*; Now the Jurisdiction it self was never questioned, but things reputed immovably firm that had their determination here, and the watchfull eye of a jealous neighbour either spied nothing, or said nothing, (and in that mu h:) or if any thing, by insinuation, All was well; *Hucusque*, and contentment there should be no Prohibition.

But to come to some particulars, having secular and more immediate Royall influence, (in giving of which I doubt not but the performance of promise shall farre exceed the measure of my undertaking, or reasonable expectation, all things considered, and that the proper Repository of such things from their nature is elsewhere:) and I begin with the great Charter, one of the most Authoritative Instruments, and solemn sealed and proclaimed deeds and Laws that our State has, or the Lawyers themselves know where to seek for. The beginning thereof is this, *Editard* by the Grace of God King of England, &c. We have seen the Charter of the lord Hen y, sometime K. of England, our Father, of the Liberties of England in these words: *Henry, &c.* which we confirm.)

Chap. i. First. We have granted to God, and by our present Charter hav confirmed for us and our heires for ever, that the Charch of England shall be ree, and shall have all her whole Rights, and Liberties inviolable. We have granted also, and given to all the Free-men of our Realme, for us and our heirs for ever, these Liberties, &c.

This is a little more emphaticall in the Latine, which for the better countenancing both of the testimony and the thing,

(1) Regulariter verum est, q[uo]d judex Clericus cognitionem non habet de Laico feudo aliquius. *Bra. Bon de Excep. cap. 12. fol. 3.*

Rex illis Iudicibus Ecclesiasticis salute[n]. Prohibeo vobis ne teneatis Placutum in Curia Christi anatatis quod est inter N & R. de Laico Feodo p[ro]p[ri]etati R. unde ipse regnus quod N. cum trahit in placutum in Curia Christianatatis coram vobis, quia placutum illud spectat ad Coronam & dignitatem meam. *Glanvill lib. 12 cap. 21. & vid cap. 3. & 4. vid. tot Etat. lib. 6 cap. 37. fol. 5. & aliis pagis.*

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(1) Sect. i. 8. Jur.

(2) That is, That all Ecclesiastical persons shall enjoy all their lawfull jurisdictions, and exercise their rights wholly without any curmption or subordination whatsoever. Cook Institut. a pa 3.

I choose to represent from a fair Manuscript in the publick  
 (1) Library of Oxford, where thus: *Imprimis concessimus Deo, & hac presenti Carta confirmavimus pro nobis & heredibus nostris imperpetuum, quod Ecclesia Anglica na libera sit, & habeat (2) jura sua integra, & libertates suas illas. Concessimus etiam omnibus liberis hominibus, &c.* This is that Charter in the ninth Chapter whereof is confirmed the Charter of the City of London; in the fourteenth, *That none shall be amerced unreasonably, but salvo contencimento, as he may be able to bear;* in the twenty ninth, *That no man shall be outed of his Free-hold but by course of Law;* (so much stood upon formerly, lately, and justly, and ever to be stood upon:) Every line whereof might have been written with some of the subjects blood it cost; and in answerable price of wortch containeth some piece or other of a firm wall to keep out Invasion, and hindering will and power gotten strong from entring upon and trampling downe the peoples Libertie; Wherein note two things granted to the Church, sc. That she should have all her Rights, 2. Liberties: Those Rights, Intire: Those Liberties, Inviolable. What were first her Rights? (3) Tythes, no question: Even then: generally due, and universally paid, and so for a long time had been: There needed no more then, or the Ages before, but to prove the land in the Parish of Dale, and the Tythes were cast upon the Church of Dale without any Evasion; And this so true and known, that there is none from the information before or other acquaintance with the state of things as they were, truly informed, but must grant as much as I say without hesitation: And these rights were also granted Intire. Next, what were her Liberties? A volumne were here little enough, and I had once thought of laying together Many. But to our present purpose let a few Acts of Parliament expound what one privilege at least was. In 18 Edw. 3. there is a statute for

(4) the Clergy, and it was granted in regard of a Triennial disme given that Martiall Prince to further him in his Wars for France. In the sixth Chapter, whereof is mention of some Justices appointed to the impeachment of Ecclesiasti-

(4) Pulton p. 143

call Jurisdiction, (of (1) Tythes among other things, why may we not well understand?) and is against the Franchise, this Statute says, of the Charter. Let the words speak their own sense. *Item, Whereas Commissions be newly made to divers Justices that they shall make inquiries upon Judges of holy Church, whether they have made just pro-cess or excessive in causes testamentarie and other (cause 3 decimall, as notoxtoultie doe belong hi her as testumentarie, a hundred p[ro]cs are for it) which (yet) notoxtoultie per-taineth to the cognizance of holy Church, the s. id Justices have inquired and caused to bee indicted Judges of holy Church; in blemishing of the Franchise of h[oly] Church, that such Commission be repealed, &c. See here what Franchise is in part, sc. to have Ecclesiastical Jurisdiction free, proved by that to disturb it is a breach or blemish of the Franchise. Next take another gloss in the plain text of 1 Rich.*

*13. where (2) The Prelates and Clergy of this Realm do greatly complain them for that the people of holy Church, pursuing (3) in the Spirituall Court for their Tythes (there is the Jurisdiction and this particular asserted) and their other things whitch of right ought, (there's more then possession, Due,) and of old times were wont to pertaint to the same Spirituall Court, (there's continuance of issue, or prescription) and that the Judges of holy Church having cognizance in such causes, & other persons theretoof medling according to the Law, be maliciooulie and unduly for this cause indicted im[p]risoned, and by secular power horriblie oppressed, &c. against the Liberties and Franchises of ho-ly Church: Wherefore it is assented that all such Obliga-tions sh[all] be of no value, &c. Here another statute inter-prets what Liberty and Franchise is by that the clogging of Ecclesiasticall Jurisdiction, in this matter of Tythes was a breach of that Franchise; and so after when the Cistercians endeavoured to exempt their Formours Lands as well as their own from paying Tythes, that due power could not fetch them in, this was again against the Franchise, as (4) complained in Parliament, 2 Hen.44. And lastly, a (5) National Council represented as one of their grievances at*

(1) The knowl-edge of all cau-ses testamentary, causes of marri-mony and divorces, rights of Tythes, Obliga-tions, and obve-n-tions by the goodness of Prin-ces of his Realm, and by the Laws and Custo-des of the same, upper-tameath to the Spiritual Juris-diction of this Realm, &c. &c.  
1. m. 24 Hen.8. 2.

(2) Id. pa. 100.

(3) That this apprehension may not seem a mi-stake, this very Chapter I finde alledged hereto-fore to prove that the proper scene of trial of tythes is the Ecclesia stical Court: by M. F. the 4. in his parallel. par. 1. Dial. 1. / ol. 6.

(4) Alleged hereafter.

(5) The Annals of Boston cited by M. Selen of Tythes, 14. 14. 14.

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London, 21 Hen. 3. The over-lavish use of the *Indicavit*, whereby the Kings Judges would first determine what tythes were due, to what Church, and this was in *Regno Angliae in praesidicium libertatis Ecclesiastice*. Which things may together shew fully enough, what the breach of Franchise was, and by consequent what the Franchise it self, by the best which is publick interpretation: Whence also likeliest this was the meaning of the Grant: That the Church have all her Rights, that is, Tythes (with others) intire: and all her Franchises, that is, Jurisdiction, (Decimal, as for other things, to bring them in,) Inviolable; no less then which could be meant by any likely construction. Or otherwise Thus; and the strength of this title may here have receivell two ways augmentation. 1. As Tythes were a Right and so warranted and intended to remain such. 2. As they came within the compas of Ecclesiasticall Jurisdiction, which, as they were given before, and any Law had assured them, (so many had doubtles,) This was then here allowed to bring them in: And so were it personall or prædiall, lamb or wool, sheaf or heap, must not now then have been withholden, but were due, and must be paid, yea, by the great Charter, yea, while that Charter was in force, could not be denied, for that herein were confirmed, to the Church all her Rights (Tythes) intire, All her Liberties, (Jurisdiction, Decimal) inviolable; and Wrong must have been to deprive her of those Rights, (of these Tythes,) of this Franchise, (of that Jurisdiction) Or otherwise lastly, Thus: Let but the jurisdiction, that Liberty, be supposed to have remained, and this would bring in all the rest: For, let the Church but have been heard to speak out in that which some accounted ther doubtless as things were (in a qualified sense) the voice of God, which was the voice of the Law, and this could have spoken out nothing but roundly and home for Tythes: For they were Due, then Due, and so Due: Let that dead letter be then but thus have been quickned by lively sentence, and the Law be heard speak out according to truth and righteousness, and the voice could be nothing else but for desired Justice, Truth, and Them.

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Of what estimation this Charter yet is and duly ought to be with all the good people of *England*, much need not be said : *Magna fuit quondam magne reverentia Chartæ*, as one said , It used to be looked upon with no other but an eye of reverence. It cost the subject both wealth, and treasure, and blows, and bloud before it could be obtained ; And after at the rate of the lives of thousands, and by the prudent and successfull intercession of some Church-Ministers (who perswaded and prevailed with the King to pass it,) as well as any other; it was granted, it had the most (1) solemn present confirmation that it now appears any publick Instrument of this state ever had. It has had (2) more then 30 other confirmations in Parliament since : For, for divers (3) Kings Raigns after successively, till by repetition that reverence before spoken of, was bred and rooted in all mens hearts toward it; one of the first things still done in that most honourable meeting was to confirm This, and the Charter of the Forest ; with no less regard of care and love, then in Councils and Synods had been wont to be shewed to the doctrine of Unity and Trinity in a Deity, by keeping the belief thereof in faith & fresh memory by some of the first Articles. In present, severall draughts were (4) taken forth, and the exemplifications sent under the Great Seal to the great men of the Realm, one of which yet is, (or lately was) at Lambeth, and (5) after renewed under the same Signature again, as well to the Justices of the Forest as to

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the

(1) The Archbishop, Bishops, and the rest of the Prelates pontifically appareld, pronounced that curse with tapers burning, which when they had thrown away upon the pavement , where they lay extinguished and smoaking, the King having laid his hand on his breast all the while,) aware to keep all Liberties upon pain of that execratory sentence, As he was a Man, a Christian, a Knight, and a King anointed and crowned. *Speed Hist. b. 9. c. 9. fol. 82.* What the curse was , who was present, against whom thundred, that shoule either break it, or bring in another, or observe it being brought , with the signing and sealing , may be seen in the old Edition of the statutes, printed 1543. at the end of *Hon. 3.* and in *Fles. lib. 2. cap. 42. pa. 93.*

(2) The Lord *Cook* has computed to thirty two (in the Proem to *Inst. 2.*) I believe more; sc. twice in *Hon.* the thirds time : that is, *Anno 9. at Westminster*, and *Anno 52. at Marlborough*, cap. 5. Also 25 *Edw. 1.* cap. 11. 28 *Edw. 1.* cap. 1. 1 *Edw. 3.* cap. 1. 2 & 3 *Edw. 3.* cap. 1. 4 *Edw. 3.* cap. 1.

*Memorand.* And beside these ratifications of the Charter, and thereby the Churches Rights and Liberties in them, Tythes (in the way shown) wth the rest; There were many distinct Ratifications in severall either Charters or Clauses besides of the same Churches Rights and Liberties. As in the Statute for the Clergy in 27 *Edw. 3.* chap. 10. in 50 *Edw. 3.* chap. 1. 1 *Rich. 2. 1.* 2 *Rich. 2. 2.* 3 *Ric. 2. 2.* 5 *Rich. 2. 1.* &c.

(3) Sc. in *Edw. 1.* time: *Edw. 3.* *Rich. 2.* *Hon. 4.* till about the end of *Hon. 5.* Where it occurs often.

(4) *Cook Vbi Supradicta. 4.*

(5) 25 *Edw. 1. c. 8.*

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(1) Ib. cap. 3.

(2) Ib. cap. 2. and  
M Charta ca. ult.  
Quæ contineat  
fuit debent uti-  
que pro insectis  
habebit Reg. Iur.  
Canon. 64.

(3) Authoritate  
Duci Patris Om-  
nipotens, Filii,  
& Sp. Sancte, &c.  
Flet Vbisup.

(4) And that all  
Archbishops and  
Bishops shall pro-  
nounce no sentence  
of Excommunica-  
tion against all  
those that by words,  
deed, or co. incell,  
do contrary to the  
fore said Charters,  
or that in any  
point breaker undo  
them. And that  
the said curses be-  
smite a year do-  
mained and publis-  
hed by the Pre-  
lates as aforesaid  
25 Edw. I. cap. 4.

With another curse  
at the end, to bind  
things as fast as  
might be, and  
Excommunication  
as censed against  
those that shalld  
translate the seven  
Articles of that Concession, (of which that was the fourth.) In the Name of the Fa-  
ther, the Son, and the Holy Ghost &c. in the said old Edition of 1543.

(5) Attic. Super Chart cap. 1. 28 Edw. I.

(6) Iam aderat annus salutis humanae 1236, & nonus cum regnare ceperit Henricus, quo anno  
Concilium Principum et habuit: Eo in Concilio de Re. is pariter & principia sententia, non  
parum multa privilegia, ordinis factordal, atque reliquo populo irregae sunt, multaque leges law,  
quas Reges qui secuti sunt, ita approbatim, ut inde bona pars juris collecta sit, quemadmodum est  
in eo libello cuius inscriptio est, Magna Charta, & altera, vulgo de Foresta, id est, de ferum  
saltibus. Poyd Vire, Angl. Hist. lib. 16. pa. 292.

It was for the last part declaratory of the principal grounds of the Fundamental Laws of England, and  
for the residue it is additional to supply the defects of the Common Law, &c. Cook Instit. 4. in Proem.  
pag. 2. So of King Johns Charter, the Barons reached him,—Schedulam quæ ex parte maxima le. et  
Antiquæ, & regni confundentes continet. Matth. Par. ad an. 1215. pa. 244. And see R. Twidell,  
Prefat ad Leg. Guil. I. & Hen. I. pa. 157.

nothing

nothing more egged the people to enforce the Petition of Right (to regain the breaches made whereinto was a part of that Petition,) then a fear they had wrong done them in this their chiefest and choicest love, which let be but read, and it alone will shew what estimation quiet subjects had thereof in those calm times, and what advantage has been made of both since, all know. A Volumne were here again too little: and yet the beginning was plainly, fully, and home for these Rights among other. And the Concession of them, which is more, made over, as 'twere, into another world, into the (1) *Hands of God*, that man should not dare recal or lay his hand upon that was so, and *To God Was Given. Concessimus Deo & hac presenti Charta nostra confirmavimus pro nobis, &c. quod Ecclesias, &c.* Whereas the peoples Liberties were given only into their Own hands. What will, if this will not, preserve them intire as they were given? What will render them inviolable, if not the sacred Omnipotent hand of the (2) most High God, to whose protection, power, and safeguard, as well as honour and glory, they were by our Ancestours (who thought themselves awake in the business of the Charter) commended? and they thought to equal it with the highest offence, that of the Gyants heretofore making attempts against Heaven by their daring presumption, if any should at any time presume to rob them from That Hand to Which they were, and so given. Many yet alledge and take a part: The ninth chap. in (3) behalf of the City of London: the twenty ninth for a Legall triall of Tythes; and the Petition of Right joyned thereto for liberty and property; that none be outed of his Free-hold but by due proces of Law, and many exclamations, bitter sufferings, hard imprisonments have been, perhaps ought to be rather then lose their childe's portion, in that great Charter, the enriching due Birth-right of every Englishman. But is not one mans Right as good as anothers? Does not any injury sit to as much discontent, irksomeness and wrong upon the galled back of one sort of sensible persons, as it doth of another? Or, may not I cry for my Childe's part as well as my Brother? The despised Minister of Jesus Christ. Can he have no wrong?

(1) When anything is granted for God, it is due and in law to be granted to God; and whatsoever is granted to his Church for honour, & the maintenance of his religion and service, is granted for and to God. Quod datum est Ecclesiae datum est Deo. Cook Instit. 1. p. 2 upon this Chapter.

(2) Sicut Deo dicatum non est ad usum humanos ultius: transrendunt Reg. 1. 51.

(3) Whose old liberties and customs are there confirmed: and likewise of all other Cities, Towns, Burroughs, &c.

## The Civill Right

Or has he no right ? Or is not he perhaps a Christian, an English man, a Man, as well as all his kindred, that any private spleen, envy, malice, greedy covetousnesse, self-love, or other wrongful and injurious passion should work in the bosom of his fellow-Christian and Neighbour (who yet loves His Own well enough, and can be content to stretch all his powers to make the most and best of it) to wish Him out of His, or endeavour, if it be in his power, to put him out, Quarrelling with him to rest contented to see his name stricken out of the Common Fathers Will ; and he shall be yet in more danger, if he strive or cry, or do any thing but sit still and submit, and be quiet while his part of the Charter is taken from him ! May not this very same evidence, if the poor Preacher and Servant of Jesus Christ, who taketh cure of souls for his Master, feeding the flock of God committed to his charge, not by constraint, but willingly, not for filthy lucre, but of a ready minde, have any part therein, be as honestly, reasonably, piously, safely, and Christian or English man-like pressed home, and contended for earnestly in his behalf, as for a mans right, a mans estate, a mans property ? Perhaps a single, simple, meek natural man, that as such, by any thing he possesses is bound to little, that he knows of, save to make himself ready, eat and drink, keep himself quiet or merry, expect the quarter or half years day, tell his rent when it comes in, and in the

(1) Rom. 13. 13.

mean while is at leisure for Any thing : To sport and play, game and riot, perhaps for (1) gluttony and drunkenness, chambering and wantonnesse, lust and envying ; and other such things (2) for which the Wrath of God is wont to come upon the children of disobedience. For such are known to live among us and enjoy their dear Own without disturbance, (which is worse, in Christian Communion too,) and relinquishing neither hopes of Law, nor Gospel, (not our Law I mean,) to see the streams of *Pactolus* flow, their heaps of wealth come tumbling in on every side, which they abuse (God forgive them) to be the jewel of their sins, to keep their vices and iniquities not only burning, but flaming in the sight of

(2) 1 Pet. 4. 3, 4.

the world, (3) Working the Will of the Gentiles, and making in all lasciviousnesse, lusts, excess of wine, revellings, banqueting,

banquettings and abominable idolatries, wondring that others  
 ( who by the Grace of God have escaped the pollutions that  
 are in the world through these lusts, and old things are past  
 away with them, all things are become new ) run not with  
 them, as formerly, into the same excess of riot, speaking evill  
 of them for it , as the Apostle says : And shall these I say, do  
 thus, and no man molest them, or trouble them, or question  
 (as God forbid they should) for craving, having , and mis-  
 spending what they have Civil right to, while the (1) La-  
 bourer is kept short of his hire, (2) The mouth of the Oxe  
 muzzled that treadeth the mowe, and kept short of his due  
 allowance; Gods Minister onely is pittanced of what may keep  
 him alive and honest together, and they that take themselves  
 for good men; doubt whether they may subtract from him  
 his part of the Charter. He is, I aver, He is one of the most  
 Necessary men in his Parish, for discharge of duty he would  
 soonest be missed of All, if he should be absent; As great ex-  
 pectation is of Him while he is there , and there is neither  
 Free-holder nor Copy-holder , Yeoman, Gentleman , or  
 scarce Any other, who in sickness, absence, exclusion , or  
 so, would be more missed of the Neighbour-hood , of any  
 of whom they expect no more then what duly they have of  
 him, and more : And what wisdom or equity were it then  
 to chuse out Him to be robbed at the root , despoiled of his  
 right, shrunk in those finews must give all his designs or godly  
 good works, life, power and motion in this world, and de-  
 fire his means of living to be withholden from him due by  
 Law, While other that would very likely do less good with it,  
 certainly have less duty expected of them for it, have enough  
 and to spare, yea , *Fruges consumere nati*, men born onely  
 to live and spend, have plenty, that nor own, nor pretend  
 to own any necessary, fitting, honest, manly imployment to  
 the furthering of that common good , whereof they reap  
 the chiefest benefit, But (like drones) suck the sweet , and  
 make sport with the sweat of other mens browes , wearing  
 Mannours on their backs, and pouring Farms down their  
 throats, swimming in golden Lard up to the Chin, as he said,  
 live at ease in Sion, neither Fish nor Flesh, having nothing of  
 Human

(1) Matth 20 8.  
chap 10.10. Luk.  
10.7. 2 Tim. 5 18

(2) 1 Cor. 9.9.  
1 Tim. 5.18.  
Deut. 25 4.

## The Civill Right

Human or Christian, Lay or Ecclesiastical, Magistrate or Officer, publick or private , charged or they think fit should be charged on their account to God or man, Church or State. I speak not this, that they should be deprived of any thing is Theirs, or to stir up discontented fault-finders against them, which I assure my self cannot be attempted without sedition in the State, or sin to their souls who should be so troublesome; Let every Swine have his own dunghil, every man have

(1) Mat. 20. 15.

(2) *Who are those  
that judge ano-  
ther mans servant?  
to his own Master  
he standeth or fal-  
leth Rom. 14.4.  
And, Why deest  
thou judge thy  
Brother? or, why  
deest thou set at  
nought thy Bro-  
ther? we shall all  
stand before the  
judgement-seat of  
Christ. For it is  
written, As I live,  
saith the Lord, E-  
very knee shall bow  
to me, and every  
tongue shall con-  
fess to God. So  
then every one of  
us shall give ac-  
count of himself to  
God, ver 10,11,*

12.

(3) 1 Cor. 15. 10.

(4) 1 Tim. 5.

17.

his Own, as well as do(1) what he listeth therewith , as the Scripture says; if He mis-spend, (2) God shall judge : But comparatively , If These , then Those , if They have , and none subtract or deny, how much less , or with equal necessity, not from him that (3) laboureth more abundantly than they all , as the Apostle speaketh ; and in another place is (4) worthy of double honour , labouring still in the word and doctrine . God forbid any should have wrong , or not their right , be it much or little, and Who or Whatsoever: But is this sort of men Onely inconsiderable, to be shut out of door when right is distributing, and they alone are Chidden ifthey ask their Due, or expect their Right from the Petition of Right, and the every man else inriching Charter : *Hes quod literulas stulti docuere parentes !* Nay , will they not blame their calling that deprives them of common equity, and shuts them out from the open Hall of Justice , and they may not claim their due in Every ones Inheritance ? It grieves me to consider , and I wonder it should be so : The same men that urge those publick Concessions so earnestly , and would suffer more rather then lose any of their little shares in this universal Grant, yet cry out against Tythes without moderation or measure, take on and complain as of a burden insupportable, and when Their own parts are taken out, They may not be restrained of their liberty or abridged of their property, (God forbid they should;) Other mens right or liberties, they may be stamped under feet, their Dues are inconsiderable, no dear Own by their Property. I hope and believe they have been hitherto but mistaken in judgement, and thinking Tythes to be no other but the impositions of some later statutes , or the usurpations of the Consistory;

no wonder or blame they would have tyranny abolished, and extactions removed, that every man may enjoy his dear Own, and no man usurp upon his neighbour in any the smalles<sup>t</sup> matter: But would they consider what deep and settled, and above- spread radication these claims have in all the Civil laws of the land; How the Parliament allowes them, the Petition of Right involves them, the Canon gave them, the Charter confirmed them, the Common Law set them up; and all the Politicks of the Nation combine and conjoyn their strength for their legal Dueness, as of Any thing: Could they look (past some single Order or Act,) into the depth of *that diffused and far-spreading Rule and Giver of all Right with us, the Sovereign Law,* and there finde that what gives all men right in this Nation, gives here with as undoubted assurance, and a manifold accumulation of more strength and evidence, They would then, I trust, change their notes, or as the word uses to be, sing us another song; They would not betray their discretion to such necessary disgrace as must follow upon their destroying with one hand, what but now they had set up with the other, nor would they take away w<sup>t</sup> their left what they gave with their right; but Right, and Charter, and Liberty, and Property, shoulde be all of a sort, and one mans claim of any thing from or by any of Them as good as anothers. Could they espy (that which is) an involved title in these publick evidences they contend for, and these Dues to be as certainly implied in the Charter (as they are) as their own inheritances; They would no doubt soon change their English mindes in a contrary way to the new-instructed (1) Islanders of Melita, settling for truth and no longer for error, (*Father forgive them, I doubt they have not yet known what they doe,*) Hence ceasing their clamour against their neighbours, as those would have no wrong done to themselves, and accounting it a most unreasonable partiality, not to be owned by those that are in any degree among the lowest sort of Honest men, to pick out that which is for their (2) turn in a publick evidence, and throw away the rest, or make that they have got of power to disavow it. Mr. Petitioner, whosoever thou be, I name None,

(1) Act 28. &c.  
(2) To se the those  
excellents Laws  
contained in this  
Great Charter, and  
divided into 38  
Chapters, which  
rend to the honour  
of God, the safety  
of the Kings con-  
science, the ad-  
vancement of the  
Church, and au-  
thoritie of the  
Kingdome, granted  
and allowed to all  
the subjects of the  
Realm Co. Inst.  
2. pa. 1.

but mean All, and in love and friendlness bespeak & petition Thee : *A. B. C. D. E. F. G. H.* or whosoever thou be that lovest the Charter , the Petition of Right, or Right it self, hearken ; And if thou be a Christian and English man, be perswaded hereafter to proceed upon more equall terms, and from a better information of judgement, cease to pervert the right words of the Law; Whatever thou hast done heretofore in the days of thine ignorance , now taking no other course but what is justifiable by the rules of common Honesty. Could I but hear you once resolve , that every man should have *his Own*, and Law should be the rule of that, your own chosen Instruments should be the evidences , and not any just mans plea shut out of the Court, be it what, or of, or for whomsoever, I would not then doubt to have gained of your honesty and simplicity a strong patronage of that righteous cause now in ignorance and by mistake ye go about to suppress, and that ye would appear valiant, yea suffering Champions for that equity and right, ye now seem resolved to take pains, if not to suffer, rather then permit any longer those that have right to enjoy. Let but a love to truth, and constancy to your own principles be with you , and I have enough, I petition, I ask no more. Nor do I altogether despair ; As great changes have been in the world, and faces about from West to East , quite contrary to what was once persecuted or prosecuted in ignorance. The two Theeves shamed not to confess the truth at last : ( I equall you not in injustice, or meaning wrong , but God grant you and I may equal them both in Turning from out our evil ways, passing from death to life, repenting our hidden sins, and converting from darkness to light, from the power of Satan unto God.) *Martha* loved much after, who before had done that needed much forgiveness. *Matthew* the cheating Publican, turned upon admonition a Disciple and Apostle ; And is not *Saul* among the Prophets, *Paul* among the Treachers ! Good men and true, Remember chiefly that last example : Wonder, but Believe it was even so ; Inquisitor *Saul* is turned a zealous Professour, and he that was a busie Persecutor , now as active an Evangelist and Professour : When Christ, who is the

the true light, shined to his soul with awfull beams, he fell down, and recanted, and repented his (1) zealous ignorance, and though he had received Commission (*Acts 9. 2.*) from the highest then of Priests and Powers, yet God caused him to revoke all, and we have (2) heard say, (as the Jews of him truly,) that *He which once persecuted in times past, now preacheth the faith which once he destroyed: for whch, men glorified God in him.* Why should the like be despaired of you? of whom I must go against mine own both hope and full perswasion, if I should say otherwise then that I believe ye have profited thus far, That ye love the truth. Ye mean well, ye will, (why will you not?) be falt men, and true to those great names of *Justice, Equity, and Righteousness,* as they shall be revealed to you, not to your own opinions, (fowardly persisted in) how plausible or profitable soever, and as new and better light shall shine, not be in love with former darknets? Be periwaded, ye may have erred: The Church has right, a Right of Tythes, a Civil Right, a Charter Right, and will you yet go against your own principles, and deny other men that right your selves think fit almost to reioice to die for? Will ye not grant, what in your own cases ye ask, and refuse to give to others, what ye expect to receive your selves? shall they not have what ye will not be denied? What Equity, Reason, or Conscience were this? Be valiant, be wise, be just, and constan<sup>t</sup>; I crave no more: Or, if ye will not, (*striving to do to others, as you would your selves should be done unto,*) How dwelleth the love or law of Christ in you! How can you expect that God, who is a God of Wisdome, Justice and Truth, should evermore shine with the least ray of his favour upon any of your enterprises! This Apostrophe was needful: God lay it to your hearts. Remem' er, there is a day appointed, when God shall judge the world by Jesus Christ; and then if you should appear to have wronged his Messengers, despised his Prophets, or driven on any close unjust design (with success) of impoverishing and making a prey of their worldly weakness whom God hath intrusted with your souls; How would you answer this worst of wrongs? What put up in excuse of so aggravated injur

(1) *I verily thought thou with my self, that I Ought to do many things contrary to the Name of Jesus of Nazareth, Which I also did acttsunslam, &c.*  
*Acts 26. 9.*  
(1) *Gal. 1. 23.*

ries? Or, what could you think to say to such an imputation Alledged by his justice, Inforced by your adversary, Assured by the things, Recorded in his and your memories, Attended with the furies of another world for compleat revenge, and that of the worst of crimes, hath the least excuse, the most of shame, and (of all you can readily thin of) the weakest and lowest hopes of mercy? Especially fit now the light of truth hath shined into your souls by better information, at least shined upon your souls by offer of bright and piercing-beams; ye *May have received the truth which truth would set you free* (from errors;) Or if more, yet it hath been laid before you, or you have been told where it is, that ye may seek for it, which will render you far toward Without excuse.

## C H A P. XXII.



ND thus much of, for, and from the most known Head of all our Laws, the great Charter; whereof the more, because it deserves more. Proceeding, next whereto is a Concession of about the end of Hen. 3. confirming the Jurisdiction, and consequent the things thereunders a Parliament Ordinance called *Regu-*

(1) In Biblioth. Bodl. Oxon. S. 1.  
2. Iur.  
(2) Pulton pa.  
109.  
(3) Instir. 2. pa.  
600.

*Prohibitio.* I first met with it in the (1) Ms. before mentioned, and set before the statute *De Anno Bissextili*: which being referred to 21 Hen. 3. I think may well be placed hereabouts: the (2) print has it of uncertain time, and (3) Sir Edw. Cook as about the beginning of Edw. 1. I believe it to be that with *Articuli Cleri, Circumspecte agatis, &c.* referred to in the end of the Statute of 2 Edw. 6. 13. though others

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(1) others point it to, *Prohibitio formata super Articulis* (1) *Ib. Pa. 663.*  
*Cleri:* Well, Howsoever: *Incipit Regia Prohibitio. Sub*  
*qua forma impetrant layci Prohibitionem in genere super*  
*decimis, oblationibus, obventionibus, Mortuariis, &c. Re-*  
*spondit Dominus Rex ad istos articulos, quod in decimis, ob-*  
*lationibus, obventionibus, &c. quando agitur ut predictum*  
*est, prohibitioni non est locus.* None to be granted in case  
 of Tythes, Oblations, Obventions, &c. and then is my  
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 proceedings. Indeed it follows, If by sale the things change  
 nature, becoming temporal, or the quantity may justly oc-  
 casion an *Indicavit*, then, &c. But in the ordinary course,  
 none.

In (2) *Edw. 1.* time we have the noted Statute of *Cir-* (2) *18 Edw. 1.*  
*cumplectē agatus*: made, it seems, to restrain and keep with-  
 in due banks some powers granted a little before to the secu-  
 lar Judges to curb in his Jurisdiction the Bishop of *Norwich*:  
 (whose (3) name yet might be but as *A.B.* an *Individualium*  
*vagum*, applicable to all who had their due liberty in danger  
 of being fettered, and indeed to them (4) severally it was  
 directed:) *The King* (therein) to his Judges sendeth thus  
 greeting. Deal circumspectly in all matters concerning  
 the Bishop of *Norwich*, and his Clergie, not punishing  
 them if they hold plea in Court Christian of such things a 3  
 he merely spiritual; that is to wit, of penance, &c. Item, If  
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 send his hook to fetch causes to his Court in some doubtfull  
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 (5) *Lindewood* has also in the Churches behalf taken into  
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In the same *Edw. 1.* time was granted the Statute of Con-  
 sultation: It hath not, I confess, express mention of tythes  
 by name, but the Jurisdiction, (and that enough) allowed:

(3) *Put but for an*  
*example: The thing*  
*extendeth to all the*  
*Bishops of the*  
*Realm Co. Inst. 1.*  
*pa. 487*

(4) *Rex enim*  
*misit certos Iu-*  
*stificarios suos ad*  
*procedendum sub*  
*certa forma con-*  
*tra Episcopum*  
*Norwicensem &*  
*alios de clerico-*bi**  
*ad hanc teneat qui-*  
*bis poies R. x*  
*scriptis ut hic ha-*  
*betur Gloss. Nor-*  
*wicensem Lynde-*  
*wood. de fido*  
*compt. l. Cir-*  
*cumplete.*

(5) *Ibid.*

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 Alledged by his justice, Inforced by your adversary, Affe-  
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 tended with the furies of another world for compleat  
 venge. and that of the world.

### NOTE

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academ  
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- (1) In Biblioth.  
Bodl. Oxon. S. I.
- 2. Jur.
- (2) Pulton p. 2.
- 109.
- (3) Institut. p. 690.

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Pulton pa 70.

(4) *Rex enim  
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wood. de firo  
comper. I. Cir-  
cumpedie.*

(5) Ibid.

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(4) In Biblioth. Bodl. OXON. S. 1.  
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(1) others point it to, 'Probibitio formata super Articulis' (1) Ib. Pa. 663.  
 Cleri: Well, Howsoever: *Incipit Regia Probibitie. Sub qua forma imperant layci Prohibitionem in genere super decimis, oblationibus, obventionibus, Mortuariis, &c. Respondit Dominus Rex ad istos articulos, quod in decimis, oblationibus, obventionibus, &c. quando agitur ut predictum est, prohibitioni non est locus.* None to be granted in case of Tythes, Oblations, Obventions, &c. and then is my drift secure: 'Tis known what would be the issue of other proceedings. Indeed it follows, If by sale the things change nature, becoming temporal, or the quantity may justly occasion an *Indicavit*, then, &c. But in the ordinary course, none.

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In the same Edw. 1. time was granted the Statute of Consultation: It hath not, I confess, express mention of tythes by name, but the Jurisdiction, (and that enough) allowed:

(3) *Pas but for an example: The thing extendeth to all the Bishops of the Realm C. Inst. 1. pa 487*

(4) *Rex enim misit certos iusticiarios suos ad procedendum sub certa forma contra Episcopum Norwicensem & alios de clero sibi adhuciente, qui bus polles R. x scriptis ut hic habetur Gloss Norwicensem Lyndewood. de foro compet. I. Circumscriptio*

## The Civill Right

for it being granted, which cannot be denied, from other assurances, both that tythes were due, and This would bring them in, in the grant hereof intire, is enough, the rest will follow. It seems some there were would then obtain a Prohibition to stop the wheels should properly move to Justice in this case, and when the busines came to the Lay Judge, go no farther: So the Plaintiff (was delayed, yea, denied right, and almost wrong, for he could have no sentence any way, for remedy whereof, it was ordered: That, (1) Whereas Ecclesiastical Judges had often surceas'd, &c. by vertue of Prohibition, whereupon nothing done in either Court, Our Lord the King willeth and commandeth, that where so ever Chancellour or Chief Justice upon sight of the Libel upon instance of the Plaintiff (if they can see that the cause can not be redressed by any Writ out of the Chancery, but that the Spiritual Court ought to determine the matters) shall writ to the Ecclesiastical Judges before whom the cause was first moved, that they proceed therein, notwithstanding the Kings Prohibition. Plain, that in some cases (2) the other Courts could afford no Justice, and therefore of necessity must be a remission hither; so appropriate was the remedy and indeed cognizance and rule of Justice to this Court, that all the rest could not so much as hear; and that righteousnes might not fail from the Earth, hither loyall subjects might only come for it. To some time of the same Kings Regn is yet farther ascribed (3) this grant, that, (Where (4) No Tallow or aid shal be levied without consent of Parliament. Nor (5) any thing purvayed to the Kings use without the owners consent; There.) We will and grant for us and our heires, that all Clerks and Lay-men of our Realme shal have their Laws, Liberties, and free Customes as largely and wholly as they have used to have the same at any time when they had them best. And if any Statutes have been made by us or our Ancestors, or any Custumes brought in contrary to them, or any manner Article contained in this present Charter, We will and grant that such manner of Statutes and Customs shal be void and frustrate for evermore. With (6) order to have it read every year twice

(1) 24 Edw. 1.  
Anno Dom. 1295  
id. pa. 75.

(2) And this is the very reason why the 12 Chap. of 3d Hen 8. was made law, because Lay men that had use of all other Courts, y<sup>e</sup> could not come as their d<sup>r</sup> e. tythes now rested upon them by any of those Courts, which made it necessary they should be enabled, to sue in the Court Christian, where only chaste d<sup>r</sup> es were tryed, and that was the thing thare done, and the new inducement there granted them, as appeareth by the Preface  
(3) Pulton, pa. 91.  
(4) Ib cap. 1.  
(5) Ib. ca. 2.  
(6) Ib. ca. 3.

twice in every Cathedrall, and a curse upon the breakers. I infer : 1. All Laws, Liberties, and Customes were here granted. 2. To Clerks as well as Lay-men. 3. Of the largest size or use. 4. In despite of any Law to the contrary; Then, 1. here be tythes, which were then due by Law : 2. the Jurisdiction of them, a Liberty, which would bring them in ; 3. And so they were both due and must be paid, (taking in consideration of the Then state of things,) by vertue of the Law, and by vertue of this Law, for that herein were granted all Laws and Liberties. Remove to *Edw.* 2. and there we finde those are styled (1) *Articuli Cleri*, and so not like to afford nothing ; but Englished , Articles (2) for the Clergy, and so like to afford something for them. The first thus proposes and resolves : *Whereas Lay-men doe purchase Prohibitions generally upon tythes, obventions, ob- Litions, mortuaries, &c. The King doth answer, that in tythes, oblations, obventions, and mortuaries when they are propounded under these names, the Kings Prohibition shal hold no place, although for the long withholding the same, the monie may be esteemed at a sum cert. in. But if a Clerk sell his tythes gathered into his barn for monie, &c. then o- therwise. And if the Kings Prohibition should not lay any impediment, but things must be tried by the Canons, we know and are assured whether tended, and what that meant. But more particularly here observe, 1. That the power which is known would give them in, is here, without dislike mentioned. 2. Plainly allowed. 3. As to tythes by name. 4. Strengthened ; By this that as in *Circumspecte agatis* no disturbance should be offered by the secular Judge impeading to proceed in their own way. 5. And all this by Parliament, Sending the trial where beforehand it was known how the busines would go ; And then, as if the supream power send a criminall offendour to the Bar of Criminals, knowing how the case will there go, looking on, permitting, and acquiescing in the sentence there to follow upon that sending; They more then seem to confirm and allow, whatever prove the issue; such interpretation may reasonably be made here of the remission of these cases , and the temporal power could not but be thought*

(1) 9 Edw. 2. id.  
pa 98.

(2) In the old edy-  
tion of 1543.

thought to own the event, and what was done whether themselves sent for trial. The provisions were as strict as well they could to hinder extravagancy, for, as treading in the steps of the *Regia Prohibitio* before, if once the thing were never so little converted to seem temporal, Away with it presently, Grant it no longer protection here, but allow suit for it wheresoever; But if it remained, *spirituale vel spirituali annexum*, it self, As reason would and the nature of the thing required; the King says, the Law says, the Parliament says, and all, let the Church have her due; If it be to try these things and bring them home to her own house, let no envious encroachment grudge her right, no not though by continuance of time the things have run so long, as they may seem to have degenerated into a Lay-commodity. Chap. 2. Also if debate arise upon the right of Patronage, and the Quantite of the tythes do come unto the fourth part of the goods of the Church, the Kings Prohibition shall hold place, if that cause come before a Judge Spiritual: Intimating, (and the practise hath been accordingly) that if less than a fourth part, (or the Patron of both the same, for so it was,) it might be tried as before. And so chap. 5. where no Prohibition is to be had (as in the title) if tythe be demanded of a new Mill; And the text: Also if any do erect in his ground a mill of new, and, after the Parson of the same place demandeth tythe for the same, the Kings Prohibition doth issue, &c. the Answer: In such case the Kings Writ of Prohibition was never yet granted by the Kings consent, nor never shall, which hath decreed that it sh. not hereafter lie in such cases. And then let the Parson alone: His strength is, those Canons will do execution enough; *De provenientiis  
aniē Molendinorū volumus quod decime fideliter & integre  
solvantur*, had (1) Rob. Winchelſee said before, then in Quonā proper.

(1) Confit. provincial. tit. de decimi. cap. 1. Molend no um, Veationum, Negotiationum, &c. tit. eod. cap. Sancta Ecclesia. De prato, de aqua, & solvendinis L. Edovardi Confess cap. 8. cited before. De molendinis, & iugari s, & tunc. Confit ut. cuiusdam Episcopi, about Hen. 3. time, alleged by M. Selen, p. 231. De provenientiis Molendinorum, p. sciarium, reno, &c. Decret. Gregor. tit. de decimis ex provenientiis. Of those forced by windes as well as water. Mandamus quatenus. H. Militem, ad solutionem decimatur de his quæ de molendino ad ventum proveniunt, sine diminutione & aliquaz compellant, tit. eod. cap. 23. Ex transmilla. And, as of Merchandise or pradial, without diminution of expens. tit. eod. cap. 28. Pastorale officii.

force.

force. *Integrè*, that is without diminution, the tenth dish, not the tenth penny, saith (1) *Lindewood*: And *memorand.* these (*Articuli Cleri*) and *Circumspecte agatis*, and some other had a clause to keep them inviolable by the late Parliament determination of 2 Edw. 6. i 3. in the end.

(1) Sc. sine diminutione, sic ut salvatur decima proventuum verè sicut provenit accidunt, ut: decima mensura

*quorumcunque granorum molitorum ad commodum domini molendini vel molendinarii pertinentium; & sic non sufficit solvere decimam piont Molendinum transit ad firmam, quoniam in firma de verisimili non est verus valor, cum firmarius ultra firmam aliquid speret lucrari.* Gloss. *Integrè*. cap. *Quoniam propter.*

Follows next *Edw. 3.* and here we have more: In every K. Reign almost somewhat, if but for recognition, and to shew that that peece agreed with the whole. As first, There had been over-lookers, as before, of the Jurisdiction Christian, who disturbed, and discouraged, (but they did but over-look and hinder, not absolutely take away; the thing remained, and hence proved.) Also some that pulled away a branch or bough rather from the tree, hindering by *Scire facias* from the Chancery the triall of Dismes from its proper Court: The King in the Statute for the Clergy before mentioned, gives remedy for both in the two last Chapters of that Act. Chap. 6. *Item, Whereas Commissions be newly made to divers Justices, that they shall make inquiry upon Judges of holy Church, &c.* But the whole was transcribed before, whereto I therefore remit. Mirk chiefly that clause, that *Causes testamentarie and others, did notoziouſlie belong to the Cognizance of Holy Church*, and the King said so. Not Rob. *Winchelſee*, or Jo. *Stratforth*, or any of the past or then present Church-Ministers, who did no more then they had power; but the King: Nor did they incroach, saith He; It was rather Then an incroachment upon them to interpose and trouble the orderly motion of their wheels tending to a just administration of things and giving every man his due in a way allowed by all the power that then was above, and publick. Chap. 7. *Item, Whereas Writs of Scire facias have been granted to warn Prelates, religious, and other Clerks to answer Dimes in our Chancery, and to shew, if they have any thing, or can any thing say, wherefore such*

18 Edw. 3.

such Dismes ought not to be restored to the said Deman-  
dants, And to answer as well to us, as to the parties of such  
Dismes : that such Writs from henceforth be not granted,  
and that the parties be dismissed from the secular Judges of  
such manner of pleas. Having to us our right, such as we ;  
our ancesto<sup>r</sup>s have had, and were wont to have of reason.  
God forbid else , and that whether Supream or Temporal  
power should be abridged of its due by any dependant or in-  
ferior : for the Charet never moves so well as when every  
wheel keeps its proper place, and every power does its own  
work without any others troublesome let or interposition. A  
wen in the body, or any monstrous excrescence (besides that  
it deforms the whole ) robs the other parts, and none is so  
much pleased with what is superabundant, as the rest is  
displeased by following necessary defect : The injury of a  
ny member redounds to the prejudice of the whole body; And  
the Common-wealth flourisheth so prosperously never, as  
when every limbe acts for it selfe, every member does its own  
office, the head, foot, hand, eye or other part command-  
ing, obeying, ruling, or being ruled as it ought , and none  
usurps or launcheth out over-buily into that of cure which  
belongs in proper delign to another. Here it was meant so:  
and therefore, *Saving to the whether Supream or Temporal  
power, what did belong thereto,* the appearance upon the Seine  
facias is discharged. Can any thing be more plain ? And if  
such inquiries had been used to be made in the Court of Reli-  
gion (as this Statute implies) Then, and must be there, and  
were here sent thither by the Parliament , And They when  
things came thither , said the tenth sheaf, fleece , colt, or  
lamb was due. Can any thing be more certain then that it  
was so done even by their recognition , assent, and purposed  
appointment, and ought accordingly to be paid ? Whosoever  
did, had an unequall task to struggle against, the mighty  
Law, and Sovereign power that made Right, if he would  
go on yet waywardly to contend. The Law is, (as (1) Gods  
Word saith of an Oath) *the end of all strife;* sith then It said  
so, and in other matters it uses to make an end, being the  
bottome of Right, the highest appeal, and uttermost anyo-  
ther

ther men had to say for any thing, how vain must they be, who would contend, that were thus concluded before they began, and all-ruling oracles of Law rightly sought, and duly applyed, and discreetly drawn forth, had determined of before, The tenth was due, and must be parted with?

About three years before, in this Kings Raign there was a repealed Session, part whereof is made to look this way: The words are these. *Item, It is accorded that the Ministers of holy Church for monie taken for redemption of corporal penance, nor for p̄son and account of Testaments, or for travail taken about the same, nor for solemnitie of marriage, nor for other things touching the Jurisdiction of holy Church, shall not be impeached or arrested, nor by blow to answer before the Kings Justices, nor other Ministers, but have Writs from the Chancery for discharge, &c.* which I finde construed in favour of tythes: But because it was repealed soon after, and doubtful when it was in being, the several possible senses of the words leading the grantors minde to look (not improbably on either part) two ways; I pass it over, and come to the Statute of *Sylva cedna*, which was sure to the purpose, at least by consequent. It was made indeed against (1) some exactions of tythes, yet so as it implies for other; The by-blow sets up to rights what the direct had pulled down, and By saying Some should not be paid, The rest it should seem Should; For a Prohibition allowed to take place for trees of twenty years growth, and no more, seems to whisper and suggest that in others it shall not, or the rest is left to course of ordinary proceeding. The words were given (2) before, not needful to be repeated again, and the most of practise and the regulation of things has been, I beleieve accordingly. Laws are commonly like two-edged swords, they cut both ways: If they say *This*, they mean *That*; If they give the Negative, they imply the Affirmative; If one in prohibition, the other to permission; If they say, a thing shall be hindered, and so far, they imply farther hindering is not meant, but the thing as to the rest is left at liberty. Forasmuch then as the Canon gave tythe of all (growing and renewing) and the Statute, finding fault with some

(1) Edw. 3 cap. 6.

By Sir Tho. Rile  
ley: in his view of  
the Laws, par 3 c.  
2. sect. 1 pa. 143.

(1) 45 Edw. 3 c 5

(2) Pa. 157.

## The Civill Right

of the latitude, gave order to prohibit but of twenty years growth; the restraint of this size is implication that liberty is left to the rest, and the hindering *but so far* that in the rest was scope; Which being for the tenth Faggot, Heap, or Cord, the Jurisdiction thereof, yea the Law thereof, and thereby Right is not a little hereby, nor obscurely furthered and ratified. Or otherwise observe, as before, two things: First, *Lex terre* did here interpose, and when any thing passed the Synod, the State could not brook, This 's power controuled That 's Canons, which hindred the Right of Tythes effectuall from going any farther then the Crown Law would allow. Secondly, but in that which was *Sylva cedua* properly, or Coppice-wood, this interpolation was not, but the other power left at liberty (known to resolve as before) Therefore there was still a connivence, and so far consent and approbation, and so this Law was first *against Tythes*, is secondly *for them*; at first hand *against Some*, at second *for Others*, And affording but a prohibition for twenty years growth, leaves, yea wils, (upon the matter) the rest, and less to be paid.

Touching which Prohibitions one thing more is in this  
 (1) 50 Edw. 3. 4.

(1) Kings Raign (from the Statute too, for still that is to me most authentique, and as a publick Act, more safe ground of opinions then any private thinkings, which I would make use of onely in defect of those) and it is against multiplying Prohibitions upon Prohibitions: Corrupt practise may after have prevailed, and by degrees it have been brought in, that a (2) succession to five or sixe generations hath followed, the Libel remaining the same, but by a Law then it should not have been so, but one be all, and all but one: after that and consultation releasing, the Ecclesiastical Judge was allowed to proceed notwithstanding any other.

(2) So averred and complained in the articles exhibited to the Privy Council, 3 Iacob. 1. in Mich. Ter. Object. 5 Cook Insti. 4. p. 603.

And this shews both there was need of a Prohibition to hinder, the Court might proceed without a Prohibition; And that a Prohibition should not prohibit after a Consultation, all to the strengthening of this jurisdiction, (which still strengthens this right and title:) and hitherward also tend many things in that Statute as 'tis called, For the Clergy, Anno 25 Edw. 3.

Richard

Richard 2. was the next that sate in the Throne, whence at the instance and speciall request of the Commons he published sundry things in amendment and relief of the Realm, and among them two in relief of the still oppresed as then thought and disturbed Ecclesiasticall Jurisdiction. (1) *The Pe-  
lates and Clergie of the Realme do greatly complain them  
of that Disturbance, in matter of Tithes, against the Fan-  
thise &c.* But the words hereof were given (2) before, there needs onely now to remember thence : 1. That Triall of the Rights of Tithes is there said to belong to the Church Court. 2. It was then so. 3. It (3) had been so. 4. Of Right it Ought to be so. 5. To disturb was against the Franchise (allowed and ratified by the Charter) All which things are there plainly in a Parliament law acknowledged. It was no new Incroachment, but an allowed usage ; It was no new Custome then sprung up, but ~~ad regis coronam~~ delivered from hand to hand through many Generations : It was not a sensesse Custome, getting head, *tantum non* against reason and equity at first, but the sage and advised Law had thus at beginning stated, and till now declared and appointed : And maliciously and Unduly, 'tis said, (to note the Fountain whence that grave Assemblie thought those bitter Streams proceeding Malice and Wrong) men were indicted for doing their then duty, as *of Right they  
ought to do, and of old were wont to do* : but to proceed ; in the next Chapter is more.

*sayd, Of old were wont to be : It was then scarce out of many mens memories, and if it is had been with reason of any such approbation, the plain intention of those ages would no do, to have measured out their words by change, and set upon us right bottome for evering within view, which for e of the had seen : to come what shall be after said in fuller arsuar and plamer prop, that in then 3. time, (and then likely by 3. and a. st. or. too) the aise sum of Dues was made and aled herepon the Scene.*

Item, It is accorded, that at what tyme that any Person of holy Church be drawn in Plea in the Secular Court for his own Tithes taken by the name of Gods taken away, and he which is so drawn in Plea maketh an Execution or allcadeth that the substance and lute of the Benefice is onely upon Tithes, b.e of Right and of Possession to his Church, or to another his Benefice : that in such case the general Averment shall not be taken without shewing specially how the same was his Lay Cattall. Here was

(1) R. 2. c. 1.

(2) Pag. 151.

(3) How long ?  
Suckward Cook  
looks back to some  
then late. 'tis of  
Star, at 18 Ed. 3.  
cap. 7. Article  
Cleric. 2 Ed. 2.  
circumspecte as  
gatis, in 13 of  
Ed. 1. &c. But the  
last day of Christ  
was but within the  
compass of a cen-  
tury toward the  
end of the young  
King's great Grand-  
father's dayes, and  
so far unlikely and  
unfit then to take  
the state & date up-  
on them for the  
gravity of a Par-  
liament, to have re-

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1. Somewhat distinct from Lay Cattal, and to oppose thereto,  
 2. Tithes due of Right, and that by Statute-testimony,  
 3. Something to be done before the Secular Court can  
 take notice when the subject is Tythes: 4. The scope of all to  
 hinder that Court. For if the Land-owner might suppose  
 them Lay; then as it was an offence for the Church-man to  
 take them, so that offence must be examined in the proper Lay  
 Consistory: but if they were *Tythes taken away*, (the Church-  
 mans due Own) then elsewhere, (where it was known what  
 would be said) and That seems forbidden. This furthered.  
 The Goods must not be supposed Lay Cattall, They might be  
 proved the Takers own Tythes, which must be done only's  
 known where; And so the whole doubt of the Lists where the  
 Controversie was to be tried, (which was the thing in quib-  
 on) vanisheth. This I take to be the meaning, the words be-  
 ing dark, and observe all along that *Lindwicks Collection*  
 seems referred to as Text, and even the Secular Law relates  
 still to those Rules (as approving) to try by them, whether  
 this or That shall be taken for Tythes or not? So that inter-  
 pretatively the very Canon (by approbation and allowance  
 from abroad) is the Rule of some Civil Right immediate with  
 us, and the Giver of some Title of Dominion, the Church by  
 intimation and supposition of the Parliaments Civil Law.

Immediately the next was *Henry 4. of Lancaster*, whose fa-  
 therly care continued to keep together these Dues to the  
 maintenance of Religion; and whereas some of the Order of  
*Cisteaux* had procured Bulls for the discharge not only of  
 the Land they used, (which was (1) allowed and a singular  
 Exemption) but of what they (2) farmed out, which would  
 not be allowed in manifest dis-agreement from the rest, against  
 this it was ordered. (3) *Fox as much as our Lord the King*  
 upon grfevous Complaint made to him this Parliament,  
 hath perceived that the Religious men of the Order of *Cis-  
 teaux* in the Realm of England, have purchased certain  
 Bulls, to be quit and discharged to pay the Tithes of their  
 Lands, Tenements, and Possessions let to ferm or man-  
 nis: proper hoc tamen non est licitum vobis, decimas de terris vestris subtrahere, quas alii tra- litis
  
 colendas id. cap. legu (3) 2 H.n 4. cap 4.

(1) Decr. Greg.  
 tit. de decinis.

cap. 10. ex parte  
 tua.

(2) Licer de be-

nignita e fedis

Apostolice sit

vobis in luctam,

ut de labotibus,

quos propriis ma-

nibus vel umpti-

bus colitis, ne-

ment decimas

solvere te ambi-

ni: proper hoc tamen non est licitum vobis,

decimas de terris vestris subtrahere,

quas alii tra- litis

coledandas id. cap. legu

(3) 2 H.n 4. cap 4.

red, or occupied by other persons, then by themselves, (for such discharge must be, or else all paid;) In great prejudice and derogation of the Libertie of holy Church, and of many Liege people of the Realm: our Lord the King willing thereunto to ordain Remedy, by the advice and assent of the Lords Spiritual and Temporal, and at the instance and request of the said Commons hath ordained and established, that the Religious Persons of the Order of Cisteaux shall stand in the state that they were before the time of such Bulls purchased: And that as well they of the said Order, as all other Religious and Seculars, of what estate and condition that they be, which do put the said Bulls in execution, or from henceforth do purchase other such Bulls of new, or by colour of the same Bulls purchased or to be purchased, do take advantage in any manner, That Processe shall be made against them, and every of them by garnishment of two moneths by Writ of Premunire facias. And if they make default or be attainted, then they shall incur the pains and forfeitures conteined in the Statute of Proclamations, made in the 13 Richard 2. Done in the Parliament at Westminister, in the Octau of St. Hillary; and we have by it a notable evidence of the King and Kingdoms good will and allowance of the continuance of these Rights, that they would not suffer them to be curtailed or kept back unpaid, not by virtue of an Order from Rome, (whose power how great it then was, all know) but willed rather a Premunire against the Detainers, Perverters, and their Adherents and Assisters: The rest did, so should they set out their Dues, as of Right and accustomed; A strong evidence they were due indeed, when the State would not suffer them unpaid! Now not only these but some others, it seems were wavering or shifting: The Fermours of Aliens gave within few years after occasion to this Vote. Item, (1) It is ordained and established that the Fermours and all manner Occupiers of the Mannours, Lands, Tenements, and other Possessions of Aliens, shall pay, and be bound to pay all manner of Dismes. (It seems others did, for this was no positive single Imposition upon them, but only an Exemption from that they would have been exempted from)

(1) 5 Hen. 4.  
cap. 11.

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(1) 7 Hen 4.  
cap. 6.

thereof due, (they were then no voluntary Benevolences, but discharge of Duty, and Due upon Command, though more acceptable if their readiness made them free-will-offerings) **To Parsons and Vicars of holy Church in whose Parishes the same Mannours, Lands, Tenements, and Possessions be** (according to the manner then used and custom established for parochial discharge) **so assesseſſed and Due.** Again, as the **Law of holy Church requireth.** (That the bottom, in ded of all, looked upon by the State, and here required to have obedience; and in others by the same reason; for why should we think These had any ſpeciall Obligation to a Rule by themſelves from the universal, which did rule all?) **Notwithstanding that the ſaid Mannours, Lands, Tenements, or other poſſeſſions, be ſeſſed into the Kings hands, or notwithstanding any prohiſion made or to be made to the contrary.** And yet notwithstanding all this too, that backwardneſſ and enuiſon of the Ciftertian crept further, which made it needful to bind up all by an universal Decree within few years after, The grievance and remedy are there both thus proposed together. Item, **If (1) is ordeneſſed that no person Religious or Secular,** (which is large enough) **of what estate or condition that he be, by colour of any Bulls containing ſuch Privileges,** (There muſt be Privileges, and if Bulls from Rom could not afford them, What as then could?) The common condition of things is known; **to be discharged of Dimes pertaining to Parish Churches,** (Payment and Parochial Again,) **Prebends, Hospitals, or Vicariages purchased before 1 Rich. 2. or ſithence not executed, Shall put in execution any ſuch Bulls ſo purchased, or any ſuch Bulls to be purchſed in time to come:** And if any ſuch Religious or Secular person, of what estate or condition he be, from henceforth by colour of ſuch Bulls, do trouble any person of holy Church, Prebendaries, Wardens of Hospitals, or Clerks, **so that they cannot take or enjoy the Tithes Due or pertaining to them of their ſaid Benefices,** Then to incur like pain at the Ciftertian before. Thus to and in the time of Hen. 4. whether the proceedings ſhew all along the good will of the State (whole Acts theſe have been) in favour of theſe

these Dues ; looking on and not hindering, but as was occasion and fit, furthering the due execution of their neighbouring Courts Laws, ever and anon renewing the pledges of their love and testimonies of their good will, that the wheels might keep moving that brought in Tithes from every Possessor, and now it was as clear all abroad and evident to us they did so, as that men possessed any thing. Henceforth therefore particular Laws were not multiplied, (as they needed not,) aiming purposely and directly at the settling or recovery of them, but those that were, were left to due execution, and that enough. The fruit doubtless (by the Churches Authority as before directly used to call for them, and the Secular Powers assistance thus to bring them in,) such an universal Payment (save where Achan would hide his Golden Wedge from the holy use it had been designed for, or (1) Ananias and his Wife

*Kai exortisato anno 715.*  
Acts 5.2. *Slops off so rewhas fr. ms. When our  
Tithes right have probably searcid our own, we had  
colour of abury to sefthem as we saw good : But  
having made them Hu whose they are, let us be  
warned by other mens example whar it is vox  
secunda, to wash or clap that Coyn which hath an  
is the mark of God. Hosker Polis lib.5. Seit 79.  
pag. 419.*

noe*rewhas*, clip the Shekel appointed for the Sanctuary, I mean, coveteous or profane men did by evident injustice hold back known Dues, against the Law,) that it needed and had a peculiar Exemption, whosoever now paid not. I need not be

exempted from a Nineth or Eleventh, because none due to be required: I want no special Priviledge to be free from contributing to a Paschal Lamb, or my Shekel for Jerusalem yearly, or the old Peter-pence, because none such now exacted among us: but to be free from this Tribute to the maintenance of Christian Religion, an Exemption was needed, which proves the *Suppositum* strongly, even as an Exception supposes an allowance of things otherwise by the general Rule, and an Exoneration or Discharge from an Impost or Quit-rent to have been paid, allows that it was due.

Three (2) sorts were indeed so exempted, (2) See a little before; but remember, that this (and it was need so, else they must have paid) 1. The Templars, till they were Order, as a general Exemption granted before to all Orders restrained them to their.

(3) taken off in Ed. 2. time, and their Indowments settled on the Knights of Jerusalem. 2. Those Knights themselves keeping their own, and suc-

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succeeding to what as but now. And thirdly, the *Cistercian*,  
(of which also before,) all by the Decree of the Lateran

Council ; and with them some others al-

(1) *Ceteris vero ut de novalibus suis qui propriis manibus vel sumptibus excolunt, & de nutrimentis animalium suorum, & de horis suis decimas non perfolvant.* *Alexand.-3.*  
in Decret. lib.3. tit. 30. cap. 10.

(2) *Whereof see a very learned Discovery in Mr. Selden of Tythes. cap. 13. sec. 2.*

so : As *All the Orders* (1) for their own new broke Grounds, their pasture ground for their Cattle, and their Garden fruit; some (2) for all their demains by particular Charter from Rome ; or by prece-  
ption , (of lands in the possession of

Clerks;) or by Grant, or by Composition, or by Custome: but these still, and the more they were, do all so much the more confirm the general usage, from which that men might be free they needed this Exemption. And this so well settled and quietly submitted to, that till the lowd and boisterous stormes in Hen. 8. time, when all was shaken, I meet not with here any disturbance, or any publick order, that (it seems) needed or had occasion to call for any new obedience. The Canons, last as they had been, placed as they were, and assited (which was never wanting) with the whole force of the Temporal Power, kept all in awe, nor were Tythes but brought into the Store-house All, in the Prophets phrase to have better use made of them than I doubt commonly was. For 'tis the charitable intention of man, the wise provision of the Law, by the blessed providence of God that sets things often in a god way to honest or holy ends, but the corruption of mankinders; seldom does one half come to good, or are the things so to abuse enough perverted, how well or piously soever levelled and intended.

## C H A P. XXIII.

**T**HUS for sixe successive Princes Raigns: Under Hen.5. Hen.6. Edw. 4. Edw.5. Rich.7. and the wise puissant Hen.7. nothing being heard of murmur and discontent, but all in peace and silence. The Canons as in *Lindewood*, &c. governed the Consistory: *Westminster* sent to controul as often as any noise was made of extravagancy, by Prohibition: Some prudent Statutes, as *Circumspetæ Agatis*, *Articuli Cleri*, &c. had bound their hands too, that they might not send as oft as they would, but when abuse called for remedy; And so things went on in Harmony for justice, peace, and order through this intervall: Laws already made were obeyed, and more were not made, because those that were, were both for their end sufficient, and set in a way to have sure execution.

But now in that general Earthquake when this Earth was moved, and all the Inhabitants thereof, though some Men stood, and some Parts were not overthrown, When the turbulent passions of that mighty and boisterous Prince left nothing untouched or unshaken, and that some might seem at least to stand the faster, other parts were thought fit to be quite pulled down; yea, buried and intombed under the ruines of their own glory, as 'twere by the fatality of *Jericho's* curse, *Never more to be reedified*, *Maledictus vir ille coram Iehova, qui surget ut adificet*, &c. yet even Then was no prejudice offered nor diminution made of this part of Ecclesiastical Revenue, or Jurisdiction to bring it in, (a great argument of its strength that had over-lived a storm, and some necessity that it was preserved when that next was chosen to be cast away;) But before this great work was done by himself and his son, divers new sinews of strength added to confirm all that had passed before, as well by clearing the right

(1) 27 Hen. 8.  
20. 32 Hen. 8.  
2 Edw. 6. 13.

(2) So is interpreted and used, and of force that of  
2 Edw. 6. 13.

(3) That the clause of trouble damages in 2 Edw. 6. 13. not to be used in the Ecclesiastical Court only: See Dr. Ridleys view of the Laws, par. 3. chap. 2. sect. 5.

That Cullions in payment of tythes are triable only in the Ecclesiastical Courts, was averred to be proved before him, Sect. 3 and see hereof the Proviso transcribed below.

(4) And that for subtraction of any of the said tythes, cullings, or other duties, the Parson, Vicar, Curate, or other party in that behalf given may by due process of the Kings Ecclesiastical Lawes of the Church of England before the person or persons so offending before his Ordinary or other competent Judge of his Re却ion, having authority to hear and determine the right of Tythes, and also to compel the same person or persons offending to doe and yeeld their said duties in this behalf.

And in case any person or persons of his or their ungodly & perverse will and mind, shall retain or withhold any of the said tythes or offerings, or part or parcel thereof, then the person or party being Ecclesiastical or Lay person, having cause to demand, may have the said tythes or offerings, before the said wronged or grieved, that and may content the person or persons so offending before the Ordinary, his Commissary or other competent Minister, or lawfull Judge of the place where such wrong shall be done, according to the Ecclesiastical Lawes. And in every such case of matter or fact, the same Ordinary, Commissary, or other competent Minister or lawfull Judge, shall and may by virtue of this Act proceed to the examination, hearing, and determination of every such cause or matter ordinarily or summarily, according to the course and process of the said Ecclesiastical Lawes, and thereupon may give sentence accordingly. 32 Hen. 8. 7.

(5) And be it enacted by the Authority aforesaid, that if any person do subtract a withdrawal any manner of tythes, obventions, profits, &c. that then the party so subtracting and withdrawing the same, may or shall be contented in the Kings Ecclesiastical Court by the party from whom, &c. to the intent the Kings Judge Ecclesiastical, shall and may, then and there hear & determine the same according to the Kings Ecclesiastical Lawes. And that it shall not be lawful unto the Parson, Vicar &c. to content or be such withdrawer of tythes, obventions, &c. other duty aforesaid before any other Judge than Ecclesiastical. 2 Edw. 6. 13.

on superiour influences ; Such power, and the Jurisdiction of Tythes therewith and thereby , and the right of Tythes by consequent, yea, in Statute words expressed, not needing any derivation, He kept up in vigour, life, strength , and quickness, as it was of use ; And as well the Records preserved as other means of information obvious enough do assure , that to his time, through his time, in it, and on this side the Law continued, which settles all, to settle these, and leave them settled, an indefeasible inheritance to us their unworthy posterity : And as they were left, so I hope for Gods glory, and the maintenance of his service and servants , ( the labourers that bring in His Harvest) they shall not but always continue to all succeeding generations. For, *Who hath despised the day of small things ?* says the Lord in the (1) Prophet: Or, (1) *Zach. 4.1.* who can deny but small things may be of great use and consideration in the greatest, sith by Divine appointment *Badgers skin and Goats hair* (2) were offered acceptably to the (2) *Exod. 25.4.* building of a holy Tabernacle, whereby, was intended the great God of All should be honoured and sanctified ? That Lord (*Dominus* (3) *enjus est terra & plenitudo ejus*) who (4) despised not a convoy of the meanest and simplest of beasts for his person on earth, seems Still to Need the vile things of this lower world to set forth his glory in this vile and lower world, and if any one say ought to the contrary, or in foward opposition, say still , as then , the Lord not onely useth, but *bath need of them* : His servants, though His, *live yet by bread*, if men, *as well as by every word that proceedeth out of His mouth*, their Lord and God. And sith, Though *Jehovah* could not be pulled out of Heaven by extinguishing any of those Lamps that burned to his honour in the Temple of the Lord at *Ierusalem*, yet his wise old servants knew that unless their care, cost, and love did procure profane oil from *Syria* and *Arabia*, Those Lampes (with his honour) would go out on Earth , which made them contrive, purpose, and do accordingly ; Even so, sith the nature of things is still the same, unless there be left such loving and discreet followers of his now, by whose vigilance, industry and care, some constant supply may be apportioned,

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Rom. 13.6.

1 Tim 3.16.

and issued forth for the maintenance of the outward part of his honour and support of his Gospel, and those servants of his that do his pleasure in holding it forth (*Ἄειρον εἰς τὸν περιηγετήτα, Ministers that attend this very Thing*) It is not without the compass of manly and Christian fear to be jealous, lest the light and brightness of the glorious Gospel of Jesus Christ, (now shining in the faces of all men, though not reaching to their hearts, it is much to be doubted, much less returning fruit in their answering upright lives,) should (which God forbid!) be extinguished upon Earth by our negligence and parcimony, though his Deity we trust shine now in Heaven, and shall, and ever, above the brightness of the Sun, and beyond all Eternity. We hold God to be the end of the soul, Truth the way leading to it and Him; The Church the pillar and ground of truth, to hold it out in view to the world, (this we are sure of *σίλος ἐδειχνεῖ τὸν ἀνθετόν*, the Apostle tells us,) and the publick Ministers are the Churches servants: If then these servants shall do that work in holding forth this truth to guide to that end, They (being Men) must not have their daily allowance of Bread withheld from them, which keeps them hale and strong, that they may live and be Able to follow their business; or if it be, the bottome foundation fail, and the whole frame must be left to sink and ruine with it for want of sustenance, or undersustentation: Unless by an unhallowed presumption we dare go on Tempting God instead of Trusting him, still urging him to do, and expecting he should do, even ordinary miracles for our extraordinary preservation (and then daily miracles would scarce be any wonders,) putting him upon more work yet, after his *Consummatum est*, to multiply loaves for his improvident Disciples, and leading him once more out of the way into the Wilderness, to lead us out of the path of his ordinary course of Providence to expect food from Heaven, when there is plenty enough upon Earth: Which if, and the boldness of our unreasonable presumption rather then well-instructed Christian faith, could be content to put upon Him, Whether yet his servants who are to do the work, and being par-

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ty to the whole had need of some liberty of choice for refusal of the conditions, could be content to accept for enough for their parts, and hardy enough to trust to as their sufficient *Viaticum* for this convoy and their journey, may not, (considering their humane frailty,) be without some doubt:

As in the space of forty years to hope for no reparation of cloaths, nor to put on a new shooe in half an age, and go provided with nothing but naked poverty to carry them through a dry and barren Wilderness, (where no water is,) Hungry and Thirsty, their souls fainting in them? Yes, They will; questionles, This and more, if they be called and compelled thereto; if the enemies of God will deny them the way, and the condition of things in an orderly Dispensation of Providence lead them to want as well as to abound: But all the friends of God will rather guide and help them in the direct right way to their *Canaan*, Neither denying them bread and water for their money, as (1) the cursed *Amorites* did, (but were after sufficiently plagued for it,) nor money, if needfull, to buy them what they want for their comfort in the way; It being one of the most reasonable things in the world, that they that give Heaven should not want Earth, and They that *sow to us Spiritual Things* should not but reap our *Carnall*. To all which things anwering and well agreeing, it was therefore religiously, piously, and prudently, as well as justly resolved by those Councils guided *Heu. 8.* to diminish nothing here, but to keep this settled and ancient Revenue of Gods honour free from the touch of sacrilegious, profane, and imprudent as well as unjust hands, That no covetous *Gehezi* that loved his gain more then godliness, should meddle with that belonged not to him: nor greedy unconscionable *Israelite* with this portion of his Brother *Levi*, due (2) for his service he serves in the Tabernacle of the Congregation, (and as necessary for the Common-wealth of Israel, as *Judahs, Simeons, or Benjamins;*) but when every one has enough, he should be free from want, and by as good security as any other claims his Right by, his Tribe have its Own also, (not by benevolence but by Right,) and so have occasion to bless the Lord his God for the good land he has.

*I have led you forty years in the Wilderness: your clothes are not waxen old upon you, and thy shooes are not waxen old upon thy foot.* Deu. 29. 5.  
See Chap. 8. 4 Ne. hem. 9. 21.

(1) Deut. 2. 17,  
28. 30.

(2) Numb. 18. 20.

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*has given him with the rest of his Brethren: It being among our Divine Oracles, agreeable to the Laws of Nature, Equity, Reason, and Civill Commutative Justice, that He that gives should receive;* (1) *The labourer is worthy of his reward;* (2) *No one going on warfare is to march at his own charge;* *He that feedeth a flock should eat of the milk of the flock;* And as He (3) *that waited on the Altar heretofore, did partake of the Altar there,* So he that ministreth the Gospel now, *should live, in the Eucalyptus,* not of the Gospel, but of the Reward of his good message, or Glad tidings, as (4) *hath been somewhat Critically, but very Judiciously and Soundly obserued on that Text.*

Thus then this Politick and herein wise and just Princere-solved, and accordingly gave his minde in sundry Acts passing his seal. The first whereof (clear enough in it self, and consequentially much to our purpose) was in cutting off Appeals from hence to Rome, and so making this Island-Church (as having no dependance of abroad,) a perfect Independent Congregation. For so it was then judged most expedient; that the affairs of *Judea* should not be sent necessarily to Egypt or Babylon; *Jerusalem* might conclude all controversies that arose in the Land where *Jerusalem* was, and our Kings Crown being of Circular and thereby most capacious form, was large enough to involve and comprehend under it a resolution of all those difficulties might arise under it; And that Therefore all doubts should be referred to him, Therefore all forain Appeals should cease, Whereupon ordered and set forth as followeth: 1. That this of *England* was an intire Monarchy: 2. Had suffered prejudice by appeals to abroad so long, as in Causes testamentary, of Tythes, Ob-lations, &c. 3. It should be so no more, but even those causes (of Tythes again expressed,) be here put to a period: And therefore, 4. Enacted, *That All causes testamentary, causes of matrimony and divorce, Rights of Tythes, Ob-lations and Obventions, (the knowledge whereof by the godnesse of Princes of this Realm, and by the Laws and Customes of the same appertaineth to the Spiritual Jurisdiction of this Realm,) (mark that Parenthesis, and the weight*

weight thereof, and this engraven in the inside of a Law, inserted into the heart of an Act of Parliament, to give the testimony certainty of credit, and the thing as much assurance to us, as any thing we have, without the Bible; that all such causes, I say,) already commenced, or happening hereafter, &c. shall be examined, discussed, and definitively determined, as the nature of any of the things aforesaid shall require, (here at home,) With power, command and threat to all to do their duty; Appeals to whom they shall be made; and from whom; and where the final decision shall rest; and All in All the Branches before specified: Which does as much as any one Parliament Law can establish and assure the then power of the Church, and thereby her following Acts, (even about Tythes expressed and by name,) and by consequent the Right and Property that should be at any time the result and fruit of all: Which must amount to we know what.

In the next year we have more of the same nature, in that concluding Proviso of 25 Hen. 8. 19. (before mentioned) about keeping life in the body of the Provincials (for a while, and till the new could be made) when the Pope the seeming Head of them was taken off. All know what dependance had been, and both to composition and execution, what influences were formerly derived from that forain power upon those Laws: When the Head is cut off, the lower Nerves use (and by consequent limbs) to lose all power and motion for want of intercourse with the brain wherein they were rooted; which might be feared or doubted here reasonably, and this made it necessary to infuse a new life of power that should serve (as then intended,) for a while, to quicken the old body, till a new should be framed by chosen workmen to fit the King better, as to making and execution depending solely on his authority. Accordingly done. The mentioned Proviso ratifies all **Canons**, **Constitutions**, **Di-  
strictances**, and **Synodals**, till the thirty two should have proceeded effectually: If they have so done, we have gained enough, (even to this particular,) and (1) shewed how before: If not, this Howsoever we have gotten, that the strength

strength that is in the Provincials, all of them, Those for Tythes before, and all other, (save what since revoked, as about Tythes nothing has) stands firm and fast by Parliament Constitution, and the evident sense of the words is to the purpose of these things unavoidable.

But if both these be yet remote, or not so fully home, wrapping things onely in implying generals (or consequences) that take in Tythes but implicitly wherein by derivation, (which is always to us fallible) may be mistake; Come we next to that which principally and fully, and in its final and clear utmost scope intends and expresses Dueness, yet Makes it, and where the words of the Law give the utmost any order can, a purposed Right and way for Recovery. Where is that? When the Cloisters went down and the whole Ecclesiastical state was thereby troubled not a little in 27 Hen. 8. Then was it needful, and Then was it done; and Then the right of these dues established, intended to be perpetuall. How appears this? By the Statute made the same year, in chap. 20. which (thereon to make some judgement by the way) as it is among the next that are nearest on this side toward us, So is it the utmost and farthest on the other, most mens weaknes of sight is able to discern or reach to the apprehension of, and yet they think they ken all, and reach (as they do, as far as they can,) the bottome whereon all is settled: But blame them not, their sight is dim, and being hindred by busyness, idleness, averseness to the thing, or manifold other sorts of incumbrances, or distractions, that they cannot, or do not purifie or strengthen it, by art, study, industry, and other painfull and laboursome means usual of searching and gaining the truth, they work not beyond the sphere of their power and ability, making able and fitting judgement of those things, they have not the plain and simple knowledge or apprehension of, that thereby they may be so able and prepared to judge. They are reputed Learned, if they can little more then turn an Almanack, understand some plain English Author, or but have seen a Statute, and then, as the *Aborigines of Italy*, which born and bred there, travailed never far from their simple homes, but

wonder at all abroad which strangers tell them ; Or, as some simple Rusticks, who used to behold only the hills that incom-  
pass the valleys where they live, think them to be near the end  
of the world; if any thing be shewed them done beyond the  
mountains, they dare scarce believe a part, and will rest much  
perswaded that, whatever travellers tell them, is, (though they  
say, what we have heard and seen, declare we unto you,) lit-  
tle better then well-composed fables. For they walk by sense,  
and not by faith, or that little faith they have, is confined  
to the things of their own narrow hemispheres; Even so  
These, the utmost of whose knowledge, or highest of whose  
possible conversation or acquaintance, is but in some plain  
simple English Book, perhaps broken Statute Book, or per-  
haps but some Abridgement or *Compendium* (*Dispendi-  
um*, those excellent instruments of advancing ignorance, and  
by help of little cost or pains inabling sluggards to know upon  
the matter as much as comes to just nothing,) build certainly  
and confidently upon this little as if it were All & enough, are  
resolute & confident as if there were no more, and if any thing  
be obtruded or questioned farther, they bestow but their at-  
tention or wonder, with (1) Jewish incredulity *they will not  
believe, nay, though a man tell it them*: Suspecting all that  
is beyond the narrow compass of their very short reach, and  
not much caring if all other superfluities (they esteem them  
so, because they are not able to judge of them) were buried  
in the pit of utter forgetfulness : As little considering that  
their foundations have foundations, and those yet again o-  
ther, and other, and under, and yet farther under, and take  
away either, or the advantage and stay of either; the readiest  
way is taking to stir all, to unsestle the firmest, to tumble  
down the highest, to leave order, happiness, peace, and  
wealth, buried under a heap of rubbish, and the fair piles we  
now behold and enjoy, even All the fruits of an orderly and  
advised disposition of things intombed under the scattered  
fragments of its own ruine and very confusion. For old things  
are not to be cast away without possible inconveniences to  
new; the foundations unseen, are still a part of the fair buil-  
ding, yes, do support it; and take away the lowest, the next

(1) Act. 13. 42.  
Habak. 2. 5.

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All sinks of any thing, and by degrees All ; Even so take away the first settling Laws, the under-prastructions when upon things had their first settling composition and stay , the rest totters, and may expect ere long ruine in a State ; Particularly for tythes, their fastest and most solid strength seems below in the old unseen acts of gift and first disposition ; the new can be never but a fair and presently useful declaration, to set out uttermost to the sight of the world , and as the paint that shines for people to gaze upon ; the strength of the wall and house both is in the inclosed materials and rocky foundation. Yet because these are of great estimation with the multitude, and ought indeed to be of some with All, I shall not shun to give them intire, in the opinion of the may enough to create a right, if nought else were , as if nought else were, perhaps they might : But as now things stand, at so far from doing it effectually and onely , that they do not in any degree ; Any more then if a present Act should be made about Fines and Relieves, the next age might think it gave the Lord that Right we know he enjoys already ; Or, as a new Act about Quit-rents and Herriots should be malken to raise or warrant the things no man but knows had right before ; (The most in addition any new order can doe being but to rectifie, dispose, or settle some new course about the things so due already , that 'tis that injury comes near Theft, to subtract or deny the just payment of them :) So the following later Statutes nor do, nor can any more but to re-vive, quicken and establish the ancient right of tythes, (extant and of long being before,) awaken mens dulness, inforne their payment, remove obstructions that have grown in by corruption with time, and make that which is shine brighter and fairer by the fourbishing over of a new and fresh authority ; Their dueness being that these statutes did never intend to meddle with, infringe, further, help, nor hinder, but they were what they were before; and it were one of the most pitiful pieces of Ignorance befitting onely the Vulgar head of unlettered Simplicians and deserving rather commiseration then the exercise of any of our manly passions to entertain a thought to or toward the contrary. What ! that these later

Seatures created tythes ! Made them due ! Gave them ! that their abrogation should have a possibility of taking them away ! and what the service of God has to trust to by virtue of their promulgation ! This is such a shallow conceit is onely worthy the weak brains of the multitude, where onely it possibly could be hatched or can be tolerated or indured ; no more excusable then if any should say, *Aristotles Astronomy* gave the Sun a being in the Firmament, or *Charta Forresterie* last set up Game, or a present Law, if it should dispose of, did erect Parks, and Chases, or a new order about Escheats or Mortuaries, the next mistaken Age might interpret to give them being and first beginning. But to the words of the Statute, which both in the beginning and progress have dueness of Tythes existent and then in being supposed, and they are as followeth.

For smuch as divers numbers of evyl disposed persons inhabited in sundry Countys, Cities, Towns, and places of this Realme, having no respect to their dutis to Almighty God, but against Right and god Conscience, have attempted to substaite and withhold in some places the whole, and in some places great parts of their Tythes and Oblations, as well personal as predial. Due unto Almighty God, and holy Church; and pursuing such their detestable enemities, and injuries, have attempted in late time past, to disobey, contemn, and despise the processe, laws, and deccres of the Ecclesiastical Courts of this Realm, in more temerous and large manner then before this time hath been seen : For reformation of which said injuries, and for unitie and peac to be preferred a nongst the Kings Subjects of this Realm, our Sovereign Lord the King, being Supreme Head in Earth under God, of the Church of England, willing the spiritual rights and dutis of that Church to be preserved, continued, and maintained, hath ordained and enacted by Authoritie of this present Parliament, That every of his Subjects of this Realm of England, Wales, and Ca-  
lais, and the Marches of the same, according to the Ecclesiastical Laws and Ordinances of his Church of England, and after the laudable Usages and Customes of their Pa-

Tythes shall be  
paid according to  
the Custo de of the  
Parish, &c.  
27 Hen 8. cap. 10.

rich, or other place, where he dwelleth, or occupieth, shall yeeld and pay his Tythes, and Offerings, and other duties of holy Church, and that for such subtractions of any of the said tythes, offerings, or other duties, the Parson, Vicar, or Curate, or other partie in that behalf grieved, may by due processe of the Ecclesiastical Laws of the Church of England convent the person or persons so offending before his Ordinary, or other competent Judge of this Realm, having authoritie to hear and determine the right of tythes, and also to compel the same person or persons so offending to do and yeeld their said duties in that behalf.

This was the Legislative part : follows order in case of contumacy, that the Ordinary or other Judge shal crave the assistance of the Justices to attach the party, and commit him to ward, till he shall recognise to yield quiet obedience, &c. Provided that this extend not to London, who were to have a way by themselves : nor to hinder any remedy by due prohibition, &c. Nor any thing to continue longer then till the new Canon should be made, which is not yet done, and whereof before enough. Mark the whole Tenour ; Is here any thing of giving Tythes ? Of wronging any man of a Farthing by a new and forced Imposition ? Of removing from one to settle on another ? To enrich Peter by taking from Paul ! Not a syllable. But all upon supposition, that somewhat was due before ; Let that be paid ; or if not, the allowed ancient course is awakened and quickened for recovery. So 'tis only a Declaratory Law, as Sir Edward Cook speaks often upon like occasion, renewing what was, and rowling up the dulnels of perverse and covetous men to pay, who were found backward ; but this was a goad to force them on forward in the way they had went, and wherein they ought to go. It werea disparagement to have here a Right settled to the Thing, and to it in our opinion, (yea, to our opinion it selfe) to think so.

But it seemeth things went not on by help of this new Law fully according to desire : The Times were we know troubled, and many other Rights being both unsettled and removed, no marvell if these (Neighbours to them) were also shaken.

Divers

Divers no doubt wished them more then so, quite down, the mouths or rather *Gulphs*, or rather then both hellish depths of sacrilegious and covetous carnal men having never been but wide open to devour what ever was sacred, and here stood gaping to swallow this morsell none of their Own, but due to man in Justice, as well as to God for Religion, and by Dedication. For going on to subtract the just payment, the complaint is evident, insluried in the sacred Monuments of the Law it selfe, and entered the Parliament Roll for memory, with what the wisdom of that Council (the Representative of the Nation) could afford for remedy of so large a spreading inconvenience. It was intended chiefly for the new Improprietor enabling him being Lay to make his Complaint in the spiritual Court, but reaching in all other alio; with intent to let him in with them, by no means purposing to shut or let both out, and though with due restraint at first to that examen only, yet Evasions were after found that both have used to go out, where no more was intended but to let one in. The Law speaks as followeth.

How Tythes ought to be paid, and how to be recovered  
ed being not paid.

Where divers and sundry persons inhabiting in sundry Counties and places of this Realm, and other the Kings Dominions, not regarding their Duties to Almighty God, and to the King our Sovereign Lord, but in few years past more contemptuously and commonly presuming to offend and infringe the god and wholesome Laws of this Realm, and gracious commandments of our said Sovereign Lord then in ti nes past hath been sien or known, have not letted to subtract and withdraw the lawfull and accustomed tythes of Corn, Hay, Pasturages, and other sort of tythes and Obligations commonly due to the Owners, Proprietaries, and Possessours of the Parsonages, Vicarages, and other Ecclesiastical placez, of and within the said Realms and Dominions, being the more encouraged thereto, so that divers of the Kings Subjects being Lay persons, having Parsonages, Vicarages, and tythes to them and their heirs, or to them and to their heirs of their bodies lawfully begotten,

31 Hen 8. cap 7.

Mark: Laws, due-  
ties, and lawfull  
Tythes.

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or for term of life or years cannot by order and course of the Ecclesiastical Laws of this Realm, sue in any Ecclesiastical Court for the wrongfull withholding and detaining of the said tythes or other Duties, nor cannot by the Order of the Common Laws of this Realm have any due remedy against any person or persons, their heirs or assignes, that wrongfully detaineth or withholdeth the same, by occasion whereof much controversy, suit, variance, and discord is like to instege and insue among the Kings Subjects, to the great detriment, damage, and decay of many of them, if convenient, and spedy remedie be not therefore had and provided.

Wherefore it is ordained and enacted by our said Sovereign Lord the King, with the assent of the Lords Spiritual and Temporal, & the Commons in this present Parliament assembled, & by Authority of the same, that all and singuler persons of this his said Realm, or other his Dominions, of what estate, degrée, or condition soever, he or they shall fully, truly, and effectually divide, set out, yield and pay and singular tythes and Offerings aforesaid, according to the lawfull Customes and Usages of the Parishes and places, where such tythes or Duties shall grow, arise, come, or be due. And in case it shall happen any person or persons of his or their ungodly and perverse will and minde to detain or withhold any of the said tythes or Offerings, or partie parcell thereof, then the person or party being Ecclesiastical or Lay person, having cause to demand or have the said tythes or Offerings, being thereby wronged or grieved, shall and may convenient the person or persons so offending before the Ordinary, his Commissary, or other competent Minister, or Lawfull Judge of the place where such wrong shall be done according to the Ecclesiastical Law. And so on to the Appellants paying Costs before he remove the Suit; Order to call in the Magistrates help in case of contumacy; saving Lands discharged of Tythes, and the City of London, &c.

This is that clearly is, and if there were no more, one would think, enough to settle as far as an Act of State or publick Decree can, both a right and a course of Justice, that men should both

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both be apportioned these Dues, and know how to come by them ; of which yet I remember my word before, and far deeper is laid , and upon more firme, and lower, faster ground then any single tottering Act the Foundation of this Right, which settles not but upon (or with) the whole body of immovable Fundamentals of the Kingdom, is clasped in with the Roots of Government, hath grown up with it through all her known progresses to the present State of perfection, is flesh of her flesh, bone of her bone, nor can, is much to be feared, without mortal violence admitt a partition and segregation : such, as if mens private parcimony and pinching, wretched Covetousness, joyned with improvidence and injultice, should go on to call for so great a mischief upon themselves, would indanger to shake the frame of the whole *Empires*, and by the same unadvised Principle of its unjust and violent removal leave little constancy or assurance of any thing. Which great Possessours had need chiefly to look to, and prevent if they can, upon any pretence ; as of easing poor men of their heavy burdens, preventing Troubles usuall in separation , hindering costly Suits formerly multiplied, wherein Christ's Minister had sometimes the hap or favour of Justice, and to get the better of his wrangling aduersarie, that will remove the ancient Land-mark, will remove any; they which complain of this Imposition may ere long think others heavy ; that will unsettle one property will unsettle another. None is more rooted then this, hath its armes and fibres dispersed through the whole body of the Laws Common Law, Canon Law, the Statutes , the Conquerours, *S. Edwards*, *King Edwards*, (the one past, the other to come) and hath indeed over-lived all the mutations and revolutions of State that have been ever since here we have aecount of any thing. Good Englishman take heed in time, thy lot is fallen to thee in a fair ground, yea thou hast a goodly heritage, if thou canst be contented, thankfull, quiet, serve God, and give every man his his Due. As *Hamon* and *Shichem* to the sons of *Jacob*, *The Land bebold it is large* ; Here is enough for every one, if we can do as we would be done unto, give every man his Own, and suffer the Law to be master and onely safe Rule to

*Gen. 34.21.*

to walk by; I am thine own flesh and bloud, and cannot but love thee, (yea, my self in thee,) with such tears of love I beseech; Let no grating Incroachments procure mutual Trouble and molestation; Let not cruelty, covetousness, self-love, pride, malice, discontent, or pining envy that another man should have more then our selves, that another should have as much as our selves, that Gods Minister (our Governour in the Lord) should have an Own with us, (his known and granted Due) prevail, least we wrap him with our selves in misery and wo, and all together in rage, fury, trouble, war, and by these wofull steps at last, temporal if not eternal confusion. If the publick had passed any thing to the contrary, This would alter the case; But I speak as Things are.:

## C H A P. XXIV.

**T**here remaineth yet one Statute more, the lastest: He that reades the former, and considers their plain, open, and full Contents, would scarce think it requisite their plainness should have an epistole, or their fulnes and sufficiency could need any supplement: but men love the things of this World Dearly, if any evasion be to be made from parting with the love of their souls, they will finde it: Call they the things of this World Goods? their fears, hopes, cares, desires, and all the affections of their souls shew an higher price in their estimation, as Best; and loath to depart they sing, for Religion, Gospel, the Service of God, and to redeem the acknowledged Ordinances of Heaven from the land of utter forgetfulness. Such is their worldly mindedness: I speak not of all, but so many there were heretofore as made it needfull to add, what young King Edward did, and by the advice and Authority of his Parliament to make yet stricter provision that former good Laws should not be perverted (though 'tis complained His is since as much perverted as any) and men might not withdraw their

their Dues upon any occasion. This was done soon after he began his Reign, and in the words following.

Whereas in the Parliament holden at Westminster the fourth day of February, the seventeenth year of the late Hen. 8 there was an Act made concerning payment of Tithes predial and personal, and also in another Parliament, July 24. in 32 Hen. 8. another Act was made concerning true payment of Tithes and Offerings; in which severall Acts many and divers things be omitted and left out, whch were convenient and very necessarie to be added to the same: In consideration thereof, and to the intent the said Tythes may be hereafter truly paid according to the minde of the makers of the said Act: Be it ordained by the King our Soveraign Lord, with the assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authoritie of the same, That not only the said Acts made in the said 27 & 32 of Hen. 8. concerning true payment of Tithes, and every Article and branch therin contained shall abide and stand in their full strength and virtus; but also be it further enacted by Authoritie of this present Parliament, that every of the Kings Subjects shall from henceforth, truly and justly without fraud or guile, divide, set out, yeld and pay all manner of their predial Tythes, in their proper kinde, as they rise and happen, in such manner and form as hath been of Right yelded and paid within forty years next before the making of this Act, or of Right or Custom ought to have been paid. And that no person shall from henceforth take or carry away any such or like Tythes, which have been yelded or paid within the said forty years, or of Right ought to have been paid in the place, or places tythable of the same, before he hath justly divided or set forth for the Tythe thereof the tenth part of the same, or otherwise agreed for the same Tythes, with the Parson, Vicar or other Owner, Proprietarie, or Fernour of the same Tithes under the pain of Forfeiture of treble value of the Tithes so taken or carried away.

And be it also enacted by the Authoritie aforesaid, that  
Cc at

*In what manner  
Tythes ought to be  
paid. 2 & 3 Ed. 6.  
c. 13.*

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*In case that the right be  
for remarrying that  
certaine person  
be relict, and  
was redeliefed by the  
Provinciall of S. M.  
Mepham before,  
Cap. Quia quidam,  
tit. de declin.  
vid. cap. pa.  
156. & 171.*

at all times whensover, and as often as the said predial tithes shall be due at the tithing time of the same, is to be (1) lawful to every partie, to whom any of the same tithe or ought to be paid, or his Deputie, or servant, to view and see their said tithes to be justly and truly set forth, and severed from the 9 parts, and the same quietly to take and carrie away. And if any person carry away his Corn, or Hay, or his other predial tithes, before the tithes thereof be set forth, or willingly withdraw the tithes of the same, or of such other things, whereof predial tithes ought to be paid, or do stop, or let the Parson, Vicar, Proprietarie, Owner, or other their Deputie or Fermours, to view take, and carrie away their tithes, as is abovesaid, by reason whereof the said tithe or tenth is lost, impaired, or hurt, that then upon due proof thereof made, before the Spiritual Judge, or any other Judge, to whom heretofore he might have made complaint, the party so carrying away, withdrawing, letting or stopping, shall pay the double value of the tenth or tithe so taken, lost, withdrawn or carried away, over and besides the costs, charges, and expences of the suit in the same, the same to be recovered before the Ecclesiastical Judge, according to the Kings Ecclesiastical Laws.

And, Be it farther enacted by the Authoritie aforesaid, That all and every person which hath, or shall have any Beasts, or other Cattle titheable, going, feeding, or depasturing in any waste or common ground, whereof the Parish is not certainly known, shall pay their tithes for the increase of the said Cattle so going in the said Waste or Common, to the Parson, Vicar, Proprietarie, Portionate, Owner, or other their Fermours, or Deputies of the Parish, Hamlet, Town, or other place, where the owner of the said Cattle inhabiteth or dwelleth.

Provided always, and be it enacted by the Authoritie aforesaid, that no person shall be sued, or otherwise compelled to yield, give, or pay any manner of tithes, for any Mannors, Lands, Tenements, or Hereditaments, which by the Laws and Statutes of this Realm, or by any Priviledge

Priviledge or Prescription, are not chargeable with the payment of any such tithes, or that be discharged by any composition reall.

Provided alwaies, and be it enacted by the Authoritie aforesaid, that all such barren, heath, or waste ground, other then such as be discharged for the payment of tithes by Act of Parliament, which before this time have lain barren, & paid no tithes, by reason of the same barrennesse, and now be, or hereafter shall be improved and converted into arable ground or meadow, shall from henceforth, after the end and term of seven years, next after such improvement fully ended and determined, pay tithe for the Corn & Hay growing upon the same: Any thing in this Act to the contrarie in any wise notwithstanding.

Provided alwaies, and be it enacted by the Authoritie aforesaid, that if any such barren, waste, or heath ground, hath before this time been charged with the payment of any tithes, and that the same be hereafter improved and converted into arable ground or meadow, that then the owner or owners thereof, shall during the seven years next following, from and after the same improvement, pay such kind of tithe as was paid for the same, before the said improvement: Any thing in this Act to the contrary in any wise notwithstanding.

And be it farther enacted by the Authoritie aforesaid, that every person exercising Merchandises, Bargaining and Selling, Cloathing, Handicraft, or other Art or facultie, being such kinde of persons, and in such places, as heretofore within these seveteen years have accustomedly used to pay such personal tithes, or of right ought to pay, (other then such as have been common day-labourers,) shall yearlie at or before the Feast of Easter, pay for his personall tithes, the tenth part of his clear gains, his charges and expences, according to his estate, condition, or degrœ, to be therem abated, allowed, and deducted.

Provided, And be it also enacted by the Authoritie aforesaid, that if any person refuse to pay his personal tithes in form aforesaid, that then it shall be lawfull to the Odi-

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narie of the same Diocesse, where the partie that so ought to pay the said tithes is dwelling, to call the same partie before him, and by his discretion to examine him by all lawfull and reasonable means, other then by the parties owne Corporeal Oath, concerning the true payment of the said personal tithes. Then after a Proviso about Easter-offerings.

Provided also, and be it enacted by the Authoritie aforesaid, that this Act or anything therein contained, shall not extend to any Parish, which stands upon and toward the sea-coasts, the commodities and occupying whereof consisteth chiefly in fishing, and hath by reason thereof used to satisfie their tithe by fish: but that all and every such Parish and Parishes shall hereafter pay their tithes, according to the laudable customes, as they have heretofore of ancient time, within these soyle years used and accustomed, and shall pay their offerings as is aforesaid.

Provided alwayes, and be it enacted by the Authoritie aforesaid, that this Act or any thing therein contained, shall not extend in any wise to the Inhabitants of the Cittie of London, and Canterbury, &c. And be it further enacted by the Authoritie aforesaid, that if any person do subtract, or withdraw any manner of tithes, obventions, profits, commodities, or other duties before mentioned, or any part of them, contrarie to the true meaning of this Act, or of any other Act heretofore made, that then the partie so subtracting, or withdrawinge the same, may or shall be convented and sued in the Kings Ecclesiasticall Court, by the partie from whom the same shall be subtracted or withdrawn, to the intent the Kings Judge Ecclesiasticall shall and may then and there hear and determine the same according to the Kings Ecclesiasticall Lawes. And that it shall not be (1) lawfull unto the Parson, Vicar, Proprietarie, Owner, or other their Fermoy, or Deputies, contrarie to this Act, to convention sue such withdrawer of tithes, obventions, or other duties aforesaid, before any other Judge, then Ecclesiasticall. And if the sentence given finde not obedience, the partie to be excommunicate, in which state if he stand soyle daies, upon Certificate into the Chancerie, to have the Writw<sup>ed</sup>

(1) Now then have  
just been ordinari-  
ly and at first in-  
stance commended  
where they have  
been.

as out *De Excommunicato Capiendo, &c.*

And before a Prohibition granted, the Libel to be shewed to the Judge &c. whose hands (the Eccles. Judges) are after bound he shall not hold plea of any matter, cause, or thing, being contrarie or repugnant to, or against the intent, effect, or meaning of the Statute of West. 2. cap. 5. the Statute of Articuli Cleri, Circumspecte Agatis, Sylva Cadua, the Treatise De Regia Prohibitione, ne against the Statute of 1 Edw. 3. cap. 10. (as 'tis printed, but it seems to be rather from the second Parliament of 1 Edw. 3. c. 11.) ne yet hold plea of any thing wherof the Kings Court of right ought to have Jurisdiction: Any thing therein contained to the contrary in any wise notwithstanding, Except for tithe of Marriage goods in Wales.

I have given this the more fully, because it seemeth the last direct binding law: and though hit be at top, the bottome whereon all is settled; But so is it not: There is that lays five times deeper, as hath been shewn, and the axe must be laid to the root of the tree, even the bottome of all Law with us, and more then 500 years deep before the utmost can be reached here, which every private man should do well to think of, that dares give his thoughts scope to deliberate about eradication. What is it to go down so low, and strike at those humours by strength of Physick that have their sediment at the Root of Nature? Galens hand trembled the day before he gave his Rubarb, foreseeing thereby the violence he must offer to the whole by pulling away a part, and to fetch some superfluities away, the Body must be shaken: If vigour of nature should not here meet to assist, no less danger or fear then which it might import to think of purging out so settled corruptions; if tythes be such, and not as many take them, very wholesome juices. But to the Statute, the words whereof carrie as much shew of openness and plainness, and this written in the face of them, as can be expected or could be devised, and that for more then a tyrannically imposed exaction, a legal and just right of all accustomed Tenthys to be hereby both payable and demandable: Nor do I fear to be mistaken, because lately perusing them,

them, the most Learned Lo. *Cook* I finde his interpretations agreeing with these my apprehensions. Though why name I him alone, when all the Learned go the same way? the painful Students, the professing Graduates, the whole Innes of Court, doubtless, and as well as the Reverend now Judges as the whole Bench of them ever since have gone on interpreting, declaring, and judging according to this opinion.

## C H A P. XXV.



*Cook in Instit. 2.  
pa. 661. on the Vic-  
try Statute of  
2 Edw. 6. And be-  
fore, on the Sta-  
tute of Circums-  
punct agatis.  
pa. 489. and in  
Instit. 4 chap 53.  
pa. 260.*

Nely there is one thing wherein (with due respects) I should crave leave to give in mine opinion with some difference from that most Learned man, (which seems also his constant resolution, because he repeats it,) and it is, That the proper scene of the trial of these dues was not anciently in the Consistory, till placed there by *Circumspicere agatis, Articuli Cleri, 18 Edw. 3. chap. 7. &c.* but in the County Court; Which if, much of what before would lose much of its strength, But seems not so allowable for these following reasons :

I. No such thing is averred plainly and positively, in any of these Laws, or any other, And that had need be plain and positive should have changed a thing, Such a thing in being.

II. The evident contrary is in them all either expressed or insinuated. For, for the latter it mentions the remanding or dismissing suits of Dismes back from the Secular Judge, which must be sure somewhither: And for the two former which might be answered to create that referrer, take them either together, or apart :

i. Together, and so they mention severally a Prohibition: *Prohibiting, what say I?* That which never was?

was? Or, then was no where? This were non-sense as to the reason of it, and it were a great blemish to the wisdome and gravity that hath always attended those Assemblies to suppose they would declare any thing for Law that might imply contrariety or absurdity in truth and reason: As that, That should be prohibited to be, that had not been, or that the Kings Judges should deal circumspectly with the Ecclesiastical, not forbidding them to hold plea of that they never did hold plea. The rule is in nature before the exception, the thing before the limitation; And exhibition of something granted and used before there can be thereof a Prohibition; As there must be Marriage before Divorce, and a property of *Meum & Tuum*, before the Decalogue can take place forbidding to steal: Even so here, there must have been a trial of tythes before with the Eccles. Judge, before the Kings could be prohibited to prohibit him; his hands must have been loose, before they could be forbid to be bound, and He used to meddle before any could soberly and rationally meddle to hinder his meddling.

2. Apart, and so all is yet plainer: for consider them distinctly, and by the first Chapter of *Articuli Cleri*, No prohibition was to take place to hinder the proper Court in matter of tythes, and surely then the business was there: And for *Circumspecte agatis* there is express mention of their there trial. For the Judge of *Norwich* was not to be hindred, nor his Clergy, if, 1. they held plea of things meerly spiritual, as of penance, &c. in their Court Christian. 2. Nor if a Parson demanded of his Parishioners oblations or tythes due and accustomed, &c. (So that, They were there Then demanded:) and in the close: **In all cases aforesorehearsed the Spiritual Judge shall have power to take knowledge notwithstanding the Kings Prohibition.** Which is not a little strengthened by a former Statute, (as it seems it is, though

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(1) Westm. 2. c. 5.  
23 Edw. 2. in Pultons  
Abridg. p. 50

(2) The same Statute (of Atticuli Cleri, Circumscripti Agatis, &

Westm. 2.) allow to the Spiritual Jurisdiction cognizance of a fish, and of all parts less than a fourth of the value of the Church in tythes controverted between two Parsons. And no Indicavit a grantable is forbad she suis of one of them commended for any lesse part in respect of the Patrons Rights only. Neither upon them by coniunction hath any Writ of Rights of any part of Tythes that appears not to be a fourth part of the Churchs value been alowable. So expoundeth Mr. Selden in his History of Tythes, pa. 437.

III. The Stat. of 1 Rich. 2. 13. mentions it then, as of old, and had *Wont to be*, that tythes should be tryed where they were sent, but had been lately restrained; which had been very inconveniently said of such late times as were so little before as almost within an hundred years, especially by a grave Parliament, as was urged before, which useth to measure words and know things. But of this sufficiently there.

IV. The Statute of Consultation, alledged also before, was made 24 Ed. 1. sc. before two of the three alledged, and so speaks as could not be supposed more plain against stopping the Ecclesiastical Judges by Prohibition: which shews surely they did proceed then.

V. Review and call to mind what was said before here,  
(1) Pa 103, 104. (3) both of erecting the Ecclesiastical Court, and trial of tythes there, and how long, (for they were under the Canon) and this will be much toward, or reach home to the clearing of the whole business.

VI. Examine things according to their nature, and they would seem always fittest here considerable: For who looks upon things as they are, and thinks not every man fittest to take care of his own matters? The Church fittest to look to the things and support of the Church? Or, that the maintenance of our Religion could have been ever anywhere more fitly inquirable and determinable of, then in the Court Christian

sian, the Court of Religion? Yea, even further for this reason, because they were *spiritualibus annexa*, as *Braeton* calls them ordinarily, they must be in way of tryal *spirituali- tari annexa*. And hence also we finde the purposed and dispersed tractation of them, as in their proper Cell, in the Canons; Not in the Statutes, nor in the Year-books, nor in *Braeton*, nor *Fleta*, nor the Common Law it self, (of late days,) for the nature of them brought them elsewhere for Regulation and Tractation; Why not? Yea, necessarily Therefore to the answering Court for discussion.

VII. Take the opinion of one, not less Learned (without disparagement,) than that Learned Justicer, who with judgment and much freedome inquired here into, and purposely long since; And he settles the Jurisdiction from the County to the Consistory by the Conquerour, as before. (1) His 14. Chapter is a Judicious and Intended History of that Jurisdiction, which having found commixed with the Secular under the Saxons, and Danes, He makes them part with the Conquerour: He produces some instances of Cases soon after reasoned and determined before the Ecclesiastical Judges, and with equal diligence is troubled to find, as a rarity, some other in the Kings Court so low, as about Hen. 2. and King John, and then Regularly they began to come to the Church alone, and neare there handled at first instance onely. This, (and it hath been so ever since) is long before 9 Edw. 1.

VIII. The Stat. *De Regia Prohibitione*, seems made when before. The print has it indefinitely for Hen. 3. or one of the first Edwards: But sith no evidence is for any of these, the place and manner of entring may give it to pass that it was in the former, sith, as before, in the least deceiving or to be suspected way of entring in Manuscript of about those times written, it is cast in among the Laws of that date, and by name before the Statute *De Bissextili*, made 21 Hen. 3.

IX. Plainly in another Manuscript of that Kings Raign, among other grievances whiche the (2) Clergy in a Synod at London represented to Otho the Popes Legate, desiring him to represent them to the King for remedy; One was, The lavish use of the *Indicavit*, whereupon, *Solent Justiciarii Domini*

(1) Selden Hist.  
of Tythes, cap. 14.

(2) *Annals of Burton*, in M.  
Selden, pa. 432.  
And observe what  
follows in Rob.  
Grosecell in  
complaint there  
next, especially  
that, A seculari-  
di non poterat,  
pa. 431. and the  
advice of the Synod  
at London, p. 433

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*Domini Regis iudicare, quota pars decimarum peti possit vel debeat coram iudice Ecclesiastico:* which was to binde the hands of that Judge, presupposing therefore certainly, and therein that he had then some liberty to use them. And another Article : *Item ne currat Prohibitio Domini Regis, ne Reitor Parochialis Ecclesie imperat eis qui percipiunt decimas infra limites Parochie sue.* There needed a Prohibition then to stop the usuall course of the Parsons, suing for the tythes of his Parish ; where ? think we.

(1) Decimis qua-  
tenus decime de-  
bent in foro Ec-  
clesiastico inten-  
tari. lib. 6. cap. 57

(2) Lib. 5. Tra 5.  
de Exceptioni-  
bus, cap. 1. sect 5.  
fo. 401.

(3) Lib ed. cap.  
9. & 10 fo. 406,  
407.

X. To omit (1) *Fleta*, who might be but under *Edm.* 2. (and yet many passages are in him fair for proof, that as sure they were then, so things had continued from *Braffons* time :) But for *Braffon* by assurance enough 'tis evident from him, that he often mentions tythes as *Spiritualibus & spiri-  
tualitati annexa*: and indeed he that can judge any thing by complex on of things, will be apt to pass his sentence from their nature; they were not far off from Causes Testamentary, Matrimonial, and other of tenderest like nature and consequence, then knowne to have their walke here. Among other (2) Exceptions (treating of them in general,) he lays one sort against the Jurisdiction of the Court, describing and defining what each is, and coming to that Section, *Qua  
pertinent ad forum Ecclesiasticum, & qua ad forum seculare*, among other things this comes in : *Nec pertinet ad eos* (the King and Secular Judge) *cognoscere de iis qua sunt spiri-  
tualibus annexa*; *sicut de Decimis & aliis Ecclesie provi-  
tionibus.* Item, *nec de catallis qua sunt de testamento vel  
matrimonio.* After proceeding to the Common place of Prohibitions, (3) quando & in quibus locum habet Prohibitio, sicut de re sacra, &c. when allowable, when not ; They do lay be says in case of lay fee, &c. but they do not when the doubt is *de aliquo spirituali, vel spiritualitati annexo*: Is tythes any such directly ? It follows : *Item locum non habebit pro-  
hibitio si agatur de decimis*: which gives more then their Jurisdiction here, here alone without any removal; a Prohibition could not prohibit, and it had been vain again to suppose a Prohibition of that might not be prohibited. This is farther that alone that takes place to cause a suit to be new grafted

(1) grafted from a Clerk to the Patrons name, bringing (up-  
on supposition of wrong done to him in his Lay-Advowson,) (1) Cap. 4. sect. 1.  
the main to the temporal Judge by *Indicavit*; And this not  
only if the whole tythes were in question, but a (2) fourth  
part, a fifth, or a sixth, but no farther: for so far the Writ  
of *Indicavit* would then reach, though (3) since it bee  
altered, and to the fourth part limited. Again, Item  
(4) *locum non habebit prohibitio de recenti spoliacione, ut si*  
*Clericus Clericum spoliaverit de Decimis vel aliis de quibus*  
*cognitio pertinet ad forum Ecclesiasticum*, in another place.  
And yet again in another, they are both styled (5) *Res Spirituales*  
(not onely *Spiritualitati annexe*, in their Jurisdiction  
as was alledged, where (6) before, but *Res* (7) *Spirituales*,) (3) By the S<sup>t</sup> 1606  
of Westm<sup>r</sup>. ca 5.  
C<sup>i</sup> cunctat<sup>e</sup> a-  
gatis, sc<sup>t</sup> 2 &  
A<sup>t</sup> c Cle<sup>r</sup>, cap.  
2. wherof see a  
notable disputation  
in M. Selden, de  
dec. cap. 1+.

and are said to shift faces and change shapes; now for This,  
anons for That; One while for Lay, Then for tythes, and  
back again ere long (as it may be) to Temporals. As Lay,  
*Laica catalla*, So they are under the secular authority: As  
*res decimata*, tythes marked out, so under the spiritual: and  
as sold returning back again to *Westminster*. *Quo teneam  
nodo?* ye: thus it is, and the thing the same under severall  
suppositions and considerations. Many other such assertions,  
suppositions, and intimations there are in him; The whole  
frame of whose Discourse bends this way, or is managed as  
supposing things thus, and I am confident he hath not any  
thing to the contrary. As for *Glanvil* who was before, he  
mentions the Court Christian often, but never tythes tryed  
there that I could finde, (though Glebe often;) This I  
confess: But then withall he mentions them not all to trial,  
nor as here, nor anywhere else, and so his authority is to  
be drawn neither way. *Bracton* dates from the farthest backward  
besides. And he hath as hath been seen.

And these things do, I rest assured, secure the thing undertaken  
for the Jurisdiction of tythes sooner in the Con-  
sistory (and by consequent their right) then was allowed  
by that most learned man. I hope his friends and favourers  
will not take it amiss that a Pigmy dare confront a Gyant, or  
Hercules in his power have some opposition by a weak and  
common passenger: *Magis amica veritas*, it must be so with  
me,

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me, and before whomsoever the beauty of Truth most gracious and lovely. *Exosculor*, I profess to love and reverence the memory of that most deserving man, both blessing and admiring the footsteps of his ingenuous sedulity, wherever I see him tracing with so much care, industry, eloquence and gravity, the windings and turnings of his sacred profession, (for he was a Judge of *Israel*: ) But *magna est veritas & prævalebit*, Truth hath the greatest command, power, and lustre with me before All, and must ever prevail before any opinions, persuasions, persons or names of men in the world. Which I take to be here, that the Jurisdiction of tythes was not made a branch of Church-power by force or permission of any ancient Statute, but a native and connatural branch of her first power, born with it and receiving life in this world, and hath been bred, continued, conserved, and brought up with it hitherto, nor since that Court has been, but this hath been a part of its work through all ages and generations. And so should I have done with this Statute, (whose comments have occasioned this digression,) but that finding there a clause for personal tythes, yet in force, and the things due, but little said of them elsewhere, and this thought the Only ground; For illustration of a dark truth, and clearing their doubted right, I think it not amiss to continue a few steps more besides the direct way, to enquire presently what deeper radication they may be discovered to have then the bare command of that single authority: For no question is, but they are due, and in conscience ought to be paid, as well as other dues, the Law remaining, whose Dueness arises only by the word of the Law: *Necesse præcepti*, as we say, merely by virtue of the commandment; no other equity or necessity of the Thing appearing, but only because they are stated settled Rights, by like reason whereto here. He that denies my Heriot or Relieve, may as well his half years rent: He that shuffles for his suit or service, Homage or Fealty, by like reason (why not?) for his Corn or money: For the same Law gives the same Due to all; They stand upon the same bottome, are brought in by the same Spring, and if this prove too weak for the one, it may not be long ere Thence the other fall short of Home also.

C.R.

## C H A P. XXVI.



To Personal Tythes then, (to lay the whole under one view,) two things very material are to be observed to have been laid down before in the bosom of the alledged Law : 1. That they were not now set up, but the Statute in making them payable sayes they shall be paid where for forty years past they had been : (which if it had not been here averred, without any great difficulty might have been made good from the condition of things, But we take that is,) 2. There was not only an Usage but a Right : So are the words ; All persons shall pay where for time past they have paid, or of Right they ought to pay. A Right then, and an Usage, a Title and a Possession are already secured. Thus from the Statute, and beyond the Statute ; but we must go much higher to search how. And we may not seasonably urge the Patern of *Abrahams spoils to Melchisedek*, nor what I finde (1) urged, *Decimus & primicias manuum tuarum* ; *Deut. 12.* And *Bring ye All the Tythes into the Lords store-house*, (not some but All,) *Mal. 3.* Or, which is most pertinent, *Give the Lord his honour with a good eye*, ————— and dedicate thy Tythes with gladness : *Give unto the most high as he hath enriched thee* (as twere howsoever,) *Eccl. 35. 8,9,10.* *Da secundum Donatum ejus*, is the vulgar there: whence *Aleensis nimby*, *Si ergo ex dono Dei possidentur omnia que acquiruntur justo negotio vel arte*, *de illis decimae danda erunt* : If we must render of all God gives, and he give what ever we get, then of all we gain in what just way soever : nor yet may I insist upon Councils and Fathers, as *Hierom, Chrysostome, Gregory, Ambrose, Augustine, &c.* the latter of whom (2) speaks out fully indeed, *Quod si deci-*

(1) By Dr. Tildesley en la Ans  
manuscript in  
Mr. Selden's  
Preface to his His.  
Roy. at this day,  
Qui Religiosiores  
sunt inter Iudios,  
loco decimana  
eleemosynam  
pendunt de omnibus  
bus lucris; decem  
aurum de  
centum. centum  
de milie, &c.  
Park's Abb. in  
remembered by Mr.  
Selden in his ro.  
view of Ap. 3.  
P. 455.  
(2) De te pore  
Sem. 219. Tom.  
10. pa. 169.

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mas non habens fructuum terrororum quod haber agricolas,  
quodcumque te pascit ingentum Dei est, & inde decimas expe-  
tit unde vivis: (good Reason and Divinity both;) *De militia, de negotio, & de artificio, reddere decimas;* *Aliud enim pro  
terra dependimus, Aliud prouiravite postulamus.* If thou  
haest no Land, Render of that thou haft, of Gods guift what-  
soever, is the shott of it. But all these are without my pale.  
And so it may be is also that of the (1) Decrees and Decre-  
tals; and yet perhaps not neither, by reason of the last Prov-  
iso of 25 Hen. 8. 19. which speaks doubtfully, and whether all  
Canons before of force remain not yet so here, (that are not  
against the Temporal State,) as well as our Provincials, is  
at least from the words very dubitable. But our own binde  
strongest, like our English Oak which admits no compare;  
So nor for strenght and certainty to us our English Constitu-  
tions. Look then at first far back, and even so far as before the  
Conquerour, somewhat was thought on here tending this  
way. Some Canons I finde or Rules of good credit digested  
and left to us under the Title of *Excerptiones Egberti*, who  
lived about the year 750. (soon after the first faith of the  
Nation,) and had it seems for his own use and oters laid to  
gether sundry Rules which he judged most expedient to be  
followed; among which, (after for Tythes in general) for Per-  
sonal. (2) *Decime igitur tributa sunt Ecclesiarum,* (saith he)  
*& cunctium animalium. O homo, inde Dominus expedit deci-  
mas unde vivis. De militia, de negotio, de artificio reddere deci-  
mas.* Tythes are a Tribute due, Therefore pay of all thou  
livest by: of thy spoiles, of thy work, and of thy handicraft.  
Of about K. Knouts time were also some other (3) affording  
reason again with command, and equity mixed with true piety.  
*Admonendi sunt qui negotiis ac m. rectionibus rerum in-  
vigilant, ut non plus terrena lucra quam vitam cupiant sem-  
piternam.* Merchants and Tradesmen are to be minded that  
they look not more after gain then godlinesse, their estates  
then their souls: and a little after, *Sicut ab his qui labore  
agrorum, & ceteris laboribus victum atque vestimen-  
tum quarunt, & necessaria usibus humanis aquirere in-  
biantes instant, decime & eleemosynae dundae sunt;* ita his quo-

(1) Demilit. 2, de negotio, &c  
artificio reddere  
decimas. Cap. 16.  
quest. 4. C. Deci-  
mæ. Quid est si-  
deler decimas  
date nisi ut nee-  
prius, nec o ious  
aliquando Deo  
offerant aut de  
grano suo, aut de  
vino suo, aut de  
fructibus arbo-  
rum, aut de pe-  
coribus, aut de  
hor c., aut de ne-  
gotio, aut de ipsa  
venatione na-  
Caus. ead. Quest.  
7. Ca. Quicunq;  
De vino, grano,  
fructibus arbo-  
rum, pecoribus,  
hortis, negotia-  
tione, de ipsa eti-  
am militia, de  
venatione, & de  
omnibus bonis,  
decimes sunt mi-  
nistris Ecclesie  
intendente, i. aut  
qui de his eas sol-  
vere neglexerint,  
Ecclesiast ca di-  
st idonee debent  
percelli. Decet  
Greg lib 3 tit de  
decimis, cap. 12.  
(2) Vid. Exce pt.  
Egberti, can. 100.  
in Spelman.  
Compl pag. 168.  
(3) Capitula in-  
cense editio[nis.  
cap. 15. in cod.  
p. 610.

que qui pro necessitatibus suis negotiis inserviunt faciendum est.  
 Unicuique enim homini Deus eedit artem qua pascitur, &  
 unusquisque de arte sua, de qua corporis necessaria subsidia ha-  
 bet, anima quoque quod magis necessarium est, subsidium ad-  
 ministrare deberet. As of Husbandmen and day-laboureis  
 Tithes and Almes are to bee spared, so of those that deal in  
 any Trade; for God gives to every man how to live, and what  
 from his gift man so uses to provide for his body, much more  
 ought he therewith to be at cost to provide for his soul. But  
 the most obseruable of this intervall was that given before  
 from King Edwards Law, (1) *De hortis & negotiationibus,*  
*& omnibus rebus quas dederit Dominus, decima pars, &c.* of  
 merchandise, and All the Tenth to be returned to God that  
 gave: which yet because it was there both given and repeated  
 needs not here again to be transcribed and recited. Remem-  
 ber I be it that whereas before the Common Law was said  
 to be made up of certain pre-existent materials, They as to  
 this particular may have been such Laws as these: Whereas  
 also those parts were after made up into one common body by  
 King Edward, in giving this he may seem to have given the  
 extract of Those (of this Nature before him:) Lastly, where-  
 is those so distinguished Laws had after severall Scenes  
 whereon things within their several charges were acted, what  
 was Ecclesiasticall being separate for the Consistory, what  
 Temporal left to the Shire Court, &c. Therefore we may not  
 now reasonably hereafter look for any thing more of these  
 personal Tythes but where they were, that is, among the Sy-  
 nodals and Provincials, and there indeed we finde, nay we have  
 both found and already given them before reinembred and  
 recited: as, What said (2) Rob. Winchelsee? *Statutimus etiam*  
*quod decimae personales solvantur de artificibus & mercatori-  
 bus, sc. de lucro negotiationis.* We appoint personal Tythes  
 be paid by handicrafts-men and merchants. *Similiter etiam de*  
*Carpentariis, Fabris, Cementariis, Textoribus, &c.* and  
 of Carpenters, Smiths, Masons, Weavers, and all work-  
 men. What (3) said he again? *Decimam lactis, &c.*  
*venationum, artificiorum, & negotiationum:* of hunting,  
 handicrafts, and merchandise. What said Simon Mepham and

(1) In cod p. 621.  
 cap. 2.

(2) Lindwood  
 lib. 3. tit. de de-  
 cimi. cap. Q. 10.  
 nam propriet.

(3) Ib. Cap.  
 sancta Ecclesia.

70. *Stratforth*, but to confirm and inforce what before he had before stated ? and as well might then those that were predial and acknowledged due have been denied as these, They stood both on one bottom. So Edward 6. found them, and did by no means raise and impose this personal burden, but bound it on to continue fast where it had been, and was ; insomuch that in stead of barren words, and empty lines, a special emphasis is to be acknowledged in that part of the clause laden with much Truth, where Every person exercising merchandises, &c. being such persons, and in such places as have within fourty years past used to pay Personal Tythes, or of Right Ought to pay (labe day labourers) is commanded yearly before Easter to bring in their Dues. They were used to be paid : Then as Now, and Now as but Then, they must and ought . To make the Payment whereof more sure , or supply the defect, there was appointed a distinct (1) mortuary, of those that were not very poor, for compensation of such personal Tythes subtracted.

(1) Si decedens tria vel plura cuius-  
cunque generis in bonis suis haberet  
animalia, optimo cui de jure fuerit de-  
bitum reservato, Ecclesie sua à qua fa-  
cramenta recepit dum v. ve et sine dolo,  
fraude, seu contra dictione qualibet pro  
recompensatione subtractionis decimalium  
personalium & oblationum secun-  
dum melius animal reservetur post obi-  
tum, &c. tunc de consuetud. cap. statu-  
tum, per Simon. Lughan.

(2) St. Germane, lib. 2. Dial. ult. fol.  
72, 173.

The force of all which things, and particularly the two Constitutions before mentioned was such, even before the statute, that as grave a (2) Lawyer (as I believe) any lived in H. 8. time, though he wonders at some particularity here, that they may be demanded, and if denied, sued for, whereas in other places they are left it seems to the Debtors conscience, yet he avers their Duenesse, describes their Nature, speaks of them as of known Right, no more questionable then predial ; And what should have been done about them if the intended Reformation, so often spoken of, had proceeded

(3) Magnam in-  
dignitatem habet  
a tenuibus & laboriosis agricolis decimas annas Ecclesiastum ministris suppeditare, mercatores autem  
opibus affluentes, & viros scientiam & artificiorum copias abundantes, nihil termē ad ministrorum re-  
cessitates coferre, præsentim cum illis, misitiorum officio non minùs opus sit, quam colonis. Quapropter,  
ut ex pari labore par consequatur merces, constitutus ut mercaores, pannorum confeccores & artifices  
reliqui cuiuscunq; generis, ac omnes qui scientia vel peritia qualecumque lucrum percipiunt, hoc modo  
decimas persolvant : pro dominibus nimurum atque terris quibus uentur, & illarum ratione decimas pra-  
ciales non solvent, qualibet anno dabant annue pensionis decimam partem. Reform. L. Eccles. tit. de de-  
cimis cap. 4 p. 22. vid. etiam cap. 23. 1, 2, 16.

severall

severall Chapters are taken up there about the disposition of them, the heads whereof were given before, and into the Contents of one of them this very Statute is taken and authorized ; If there had been a new Canon Law, those Chapters should have been part of it ; As there is none, the old is of force, and in all its power beside the Statute, and that again by Statute. Neither had the thing onely consideration in Books ; we finde regard given to it in the Acts of Men, and the World busied, not to say very much troubled about the Wealth that came in by them. The great and vexed Controversie in *Oxford*, in *Henry 6.* time about *Fr. Russell* and his Doctrine which took up the learned Disputes of the University there, and smoother Consultations also of the Convocation at *London*, and after was transmitted to *Rome*, and there not ended, was onely about the necessary and fit Receiver of personal Tythes ; while he maintained, it seems, to his own advantage, and against the Secular Priests, that they might be given as well to the poor as the Church, as we say, to the Monk as to the Priest, (and then he stood ready as a Mendicant, as the Priest for his Parish : ) They on the contrary to the Church onely, and so He and His were excluded. The determinations it seems settled (the major part) against him, and he for his error was enjoyned to recant publiquly at *Pan's Crosse*, lesse then the performance whereof would not serve the turn, and all the Pulpits in *England* commanded to ring of what an Heresie *Fr. W. Russell* had maintained (indeed against the Pulpits) about personal Tythes, now to be cried down by all opportunity, and the utmost of possibility. The Particulars I finde (1) related at large ; the use I make of them is onely this, that These things Have been of Real consideration, not an empty Book Order, but such as had influence upon things and produced visible effect, the Consultations of Men having been taken up about the disposall of the seen fruit of them, much busying, yea not a little troubling the World, for long since, and so long together, and so no doubt things stood to *Edward 6.* time, and so he found and left them. Whereupon, and that ancient rooted Right (spreading likely further, as might be found by further inquiry, if it were also need-

(1) By Mr Seiden in his History  
of Tythes, cap. 7.  
See & 5.

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ful,) he settled his new vote and order of confirmation as it were : What, to make personal tythes due ! to give them life and raise them to being ! Nothing less : to revive and quicken the Law, that dull men that were to pay, and had went, might be rounzed up to a ready and obedient performance of that which was their ancient known duty, to awaken justice, and force backward men to bring in their publik tribute, which though for Gods service their worldliness had rather perhaps were left out or let alone : Due they were before ; This vote of publick power onely cleared the channel that the in-come might be it self, and come in fresh and free, without impediment, for which His words and Act reach, we see, fully his meaning.

By occasion of which clause of such import, thus much : Thus much of Personal Tythes, And thus much also for the last binding Act of State both for personal and predial, in : C<sup>o</sup> 3 Edw. 6. Behither which is little but the implying Petition of Right, (in the grant of All mens, without doubt meaning These,) That other was the last, clear, full, express, purposed and direct binding order. Not yet of no force; Even for it self; though the chief strength (beside the Legislative power of the Land, here drawn into Act) is in a broad and before; The Root that supports and cherishes most powerfully (both predial and personal still,) laying farther in the Right created by ancient Constitutions, deeper then possibly can be thought by any new declaration. For we shall seldome meet with a tree that planted the last year hath attained much strength ; It must have time to root and settle, before it can be able to endure the shock of a tempest, or make good its being against any forceable opposition : So the best and usefulllest Constitutions of State are those experienced firm ones, that have lived, summered and wintered with us, as we say, and given approbation of their agreeing with the soil by having safely endured there all influences; Settling and gathering strength, (as it uses to be, and Must) by degrees, and in and with time clasping in fast to be made one, & co-incorporate with the soil of a Re-publick. Rash decrees use to be as soon revoked almost as made, bespeaking little

little but uncertainty at first both to themselves, and all things and persons that they are conversant about : Blessed are the days when the Aged decree Judgement, the ancient and experienced good Laws, I mean, are made the sure and constant rule of Righteousness. And even this Humane Ordinance hath so much in it of Divine, that it partakes of toward his nature who is Constancy and Immutability.

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Ut to go on to the mentioned Petition of Right, a great and bright star shining bithermost and very clear in the firmament of our Law ; whose allowance vulgar apprehensions still gaze at for the great and onely stabiliment of all, as indeed an excellent and needfull stay it then was, when it was, of the subjects tottering property : But to look upon it as the onely bank and bulwark against tyranical invasion, both the settler of Right and Giver; the knowing know there is more then twice ten times as much dispersed abroad ( though in *latebris* to plain English Readers) as this, Nor could the supream power without breach of trust, and transgression of duty have before, ( and so it may still ) invade the peoples Right, or without injury have then ( and so it may yet ) do injustice and unrighteousnes. A Bond this was upon the former Covenant, a new lock added to the former bolts and bars to keep out invasion from above from protectours, now explicitly, purposely, newly, and afresh confirming to all their old Rights, ( no more, ) And say which : The Merchants right, the Gentlemans Right, the Noblemans, the Free-holders, and why not also the poor Scholars too ? the Church-mans too ? whose work is Church-work, and his Trade and Calling publick, holy, heavenly duty : that so having his Due,

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he may the better do his Duty , having his Right, people may the better look for Theirs ; and having his property to live on (his Living) secured him in peace, and with assurance, he may now (1) serve His Lord above Alone ; and having nought of this vile, yet necessary world to interrupt and stop his course, he may now wait upon Him (2) without distraction. The rather considering what a prosperous and lucky hand he had in helping to procure as well the Charter, as this Petition, much of reason would stand on his side, that he should gather some of those grapes himself had helped to plant the sciences of, he should partake of the harvest he had sown, and reap some fruit of his own successful impetration; at least to have his own Right secured in that he helped to obtain to All, The Petition of Right. The title whereof gives Petition exhibited to his Majesty by the Lords Spiritual and Temporal and Commons in Parliament assembled , concerning divers Rights and Liberties of the Subjects, &c. and The Contents, Humbly shew unto our Sovereign Lord, &c. (the persons before,) That whereas it was declared (34 Edw.1.) that no Tallage, &c. yet of late divers Commissions have issued, &c. And whereas by the great Charter, &c. no free man may be taken or imprisoned, or (3) be disseised of his free hold and Liberties, &c. but by the Law of the Land: yet, &c. And some other things touching life, &c. Now they pray that the like may not be done hereafter, &c. All as their Rights and Liberties according to the Laws and Statutes of the Realm; and that all Officers and Ministers serve in their places accordingly. Whereunto the Kings answer being, That Right be done according to the Laws and Customs of the Realm, and that the Statutes be put in due execution, that his Subjects may not have cause to complain of any Wrong or Oppressions contrarie to their just Rights and Liberties; This not satisfying, upon reply this second personal answer was added, Soit droit fait come est desire, Let Right be done as is desired; And this after expounded to be mistaken, if it were drawn to any other then the Ancient Rights and Liberties, which he willed, and no more. Where still we find Rights sounding

(1) *¶ Cœc' rō dū  
Xp̄c̄s x̄ c̄v̄  
t̄c̄rd̄, r̄ t̄d̄  
x̄c̄o. That ye  
pray visit on and  
stick close to the  
Lord, 1 Cor. 7.35*

(2) *¶ A t̄c̄t̄ m̄l̄c̄ g. Not whi-  
lest and turned his-  
ther and sinther,  
as men & fethes  
are distractid with  
cares how to live,*

*for violent are the  
plunges of his &  
bloud to preferre  
it selfe, and self-  
loving nature will  
look about before  
it yield to be sup-  
pressed or checked.*

*But that ye may  
assure this Thing  
alone, and serve  
ye now only  
at after without a-  
vocation, is d.*

(3) *It right have  
been by the same  
reason, Whereas  
the Churc̄ had  
some sp̄ciall  
rights, and those  
contained in the  
Charters; Also  
priviledges and  
immunitie graun-  
ted there, &c. as  
before. Pray they  
therefore every man  
or sort of men may  
have their Own:  
And as much was  
after allowed in the  
generall word  
of Right, and ac-  
cording to the  
Laws and Customs  
of the Realm,*

founding all along, and concession of Them, and in answer to such a Petition, the particulars are within the possible and easie view of every English mans eye, and they fitly All march under the Head of the Petition of Right. Now then I infer and argue : What is that was here granted ? Was it not Right ? Right to All ? and one mans Right as well as anothers ? Did not the whole Commonalty petition ? Were not All heard ? Was not All granted, and to All ? And if those that wait upon the Temple of the Lord in *England* in his holy Service, had thereby then, and yet have , they and their successors an Own and Right, was not this then meant to be granted ? and was granted and settled upon them Therefore thereby , nor can be revoked, but by the revocation of this, or a part of this Concession of Right ? Each mans wrong is of the same nature, guilt, injury, crime, and grievance, Nor can they ever be interpreted but partiall and unjust sharers of such a claim to themselves , as , Any others having e- quall part with them therein, they can be contented earnestly to strive for their own, and will not be denied, but for those others, think they may be excluded ,(or help to exclude them) at pleasure, and no matter whether they partake of any share in the common allowed stock of Right. As if it were Theft to steal, but not from some : Injury to defraud, but the Red or Gray Coat , not the Black : The Law must hold in some cases, what need it in other ? to retain him in possession of his Right that hath nine parts, but not him that hath right to the Tenth; One mans Own may not be taken away, nor injuriously invaded, but his Neighbours may, (that holds by the same Charter,) and himself outed, or spoiled, or wronged at pleasure, and That shield is large & strong enough to protect against al assaults the former,for the later is infirm & narrow, though it were seen to be made of the same breadth, strength and firmness. What equity is this ? Should not every ones case that is the same be alike , and every Childe part equall in the same stock of the Common-wealh ? Murmurers were in the Apostles time, and discontented fault-finders no doubt in ours ; But let no private worldling be heard as speaking reason, that Right is wrong, or the expectation of this Right

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<sup>1</sup> Tim 1. 9, 10.

is now to him and others grown burdensome. There is none fit to judge, who is able to say, Any part of the Law is Burdensome. Exactions are burdensome, injuries are burdensome, oppressions, spoliations, deprædations, undoings of those that are innocent and quiet in the Land, All iniquity is generally burdensome: But the Law is a gentle yoke, Justice lovely, Right a favour, the dictates of these never were nor ever can be truly burdensome; Unless, as Gods Word says, *to the disobedient and lawlesse: ἀτέλεια καὶ ἀνεπιθύμησις, to the irreligious and sinners* (that have no true fear, or worship of God, for this would teach to obey every Ordinance of Man for the Lords sake;) *avocatio καὶ βεβάνωσις, to unsanctified and profane men* (that have never known true purication, whatever they pretend;) *patricidis, matricidis, homicidis*, (fit company, 'tis pity they should be parted;) To Whormingers, also to Plagiaries, deceitful lyars, forsworn lyars, and such other; To all these the Law is Burdensome, Blame them not, they are weary to beare it, 'Tis a beam to their backs, and lays on fast and close, wrapping them under everlasting as well as heavy inconveniences: But that the Law is burdensome to any Just man, can hardly be believed by any wise man. 'Tis Gods great blessing to a Nation, it makes rich, happy, safe, and quiet where it comes; An humane Oracle for deciding humane doubts in matter of own and equity amongst men, the voice of Justice, the measure of Right, that gives to every one His, every one something, most men enough, all whatever they enjoy; Allotting upon grave consideration what they should have, why they should have, how much they should have, why no more, and generally upon good reason, why things throughout Be as they Be, (if our wisdom drew deep enough to fathome the reason of her profoundly prudent consultations, resolutions and dispensations) and shall we yet say, That Law is burdensome? My neighbours will be burdensome, his covetous desire is burdensome, his unjust, wicked, worldly ambition may be, to sit Umpire on my estate, to inquire what I have, to determine I have too much, but I shall have less, the superfluity of my abounding right (which is but one part of ten to keep me alive to serve

God

God in his Church already, whereas he has the other nine to serve none but Himself, or perhaps *Venus*, or *Bacchus*, or *Mammon*,) must be pared off to piece up supplies for his riot and prodigality, to feed the greedy worm of his covetousness, or rather to help fill up the wide and insatiable gulf of his craving ravenous and cruel soul; This were indeed, what were it this were not heavily burdensome? But shall I serve the Lord Christ with such an inside? Shall I profess my self a Church-member, yea, a member of Christ, the Childe of God, and an Inheritour of the Kingdome of Heaven, harbouring in my bosome a nest of such unreasonable, griping, cruel, carnal lusts? Shall I go on to read the Scripture, profess the Light, hang on Jesus Christ and all his Ordinances, with pretended love to his Law, and grudge or subtract any mans known worldly dues, refuse to give every one his own, detract from the humane ordinance, and dare say in any case Right is wrong, or Law burdensome? Shall my turbulent, greedy, envious, unruly passions prevail with me so farre to make me thinke my neighbour has too much, though it be his Own, I must covet it, I will have it, Nay, Gods Minister has too much, of his known Right, I cannot temper but I must covet my neighbour goods, That neighbours goods, (1) Gods Ministers Right, Rob the Church, yea, perhaps rob God, and starve, or occasion the starving of souls by withdrawing that which should warm the bloud and quicken the bodies of those should and would feed souls in present, and discourage those that are to come in hereafter? furthering in the least degree or upon any pretence by my wilfull parcimony, that the thing we have so long feared, may at last fall upon us, That children may cry for bread and there be none to give it them, a worse famine may pinch us then that of bread and water, even a famine of the Word of Life, that hungry souls may run hither and thither for meat, and grudge being not satisfied; from Parish to Parish, from one empty Church I mean to another, for the Ordinances of Life, and none be found in Zion to comfort her children, a well-instructed Teacher in England be as rare as was a man in Israel, and because no more meaus is left to sustain his natural life, One Preacher must

(1) Let a man so account of us as  
of Members of  
Christ, and rem-  
arks of the nigh-  
ness of Gods Com-  
ing. 4.1.

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must serve for twenty Congregations. Away *Pluto* and *Mammon* ! Let *Judas* and *Achan* be for ever separate from the Congregation of the Lord ! Cursed be *Ananias* and *Sapphira*, and all their brood ! Let their posterity never find fig-leaves to cover the shame of their sin in this world, nor any thing but Gods mercies and Christs merits to shelter their guilty souls from condemnation in the world to come. Let me have ever light enough to know mine Own Justice to give every man his Due, Religion to direct, I Ought to do so, Prudence to measure it out by the onely wise and safe Law, and either cast away my Bible, (Gods Law,) out of my hands presently, or cease eternally to covet my Neighbours goods. One word also in the spirit of meekness, to him not hitherto thought of, that is, I take it easie enough to be led, but as it falls out miserably out of the way, that follows the light of his eyes, and they guide him to errour, urging the Petition of Right for every ones and his own, and yet crying down tythes thereby, which being a Right can certainly have no discountenance, but must rather have a firm, consequential establishment by that Petition. *Philip, Philip,* understandest thou what thou readest? Do but say, I pray thee, what is it thou so importunately callest for? Is it not for Right Civil Right? Every ones? Thy Neighbours as well as thine own? And Christs Ministers, if he have Right, yea, Civill Right, hereby to his Tenth, as well as thou to thy Nine? If this; why pervertest thou the right words of the Law, destroying again presently what but now thou buildedst up, and by or with thy hoarse and importunate out-cries for this Petition, endeavourest to cry down tythes thereby, which being a Right (sure Mans right is not Gods right) cannot but have thereby a clear and evident confirmation. Is not ones mans right of the same kinde with anothers? and as good as anothers? Must not thy Pastors have been included in All? Or, couldst thou be content to have his little portion understood at least to be struck out of this book of temporal life to augment thy part, to a proportion of ninefold bigger then His already? What equity were this, or shew of Conscience? Suffer I pray thee the word of exhortation, and be not offended

offended if I tell thee the truth : If thou be a Christian indeed, thou wilt not entertain a gentle reproof with disdain, nor repay meekness with rage, storming at him that would by the grace of God, and according to the light given him, deliver out nothing to thee but the words of truth and soberness. Ask thy Lawyer, and he will tell thee : Advise with the Learned in his own profession : Consult with the Potter about the things of his own trade. There is never a Judge at Westminister, never a Serjeant in their Innes, never a learned Councillour or knowing man in this Land, but will assure that tythes are as due (besides the rules of equity, for work, and generals of Scripture, for competent maintenance) by the Law, the rule of Civil righteousness among us, to their due receivers here, as any rent, or rent-charge, debt or bond, (not a benevolence, but a strict Right,) and that the settled and compleat body of the Law doth with as much unanimity, evidence, constancy, and aged consent agree to settle and say so for them ; and yet doest thou contend, and urge a publick grant of right as an argument to destroy them ? Those sages are wise; They will not deny their books; They cannot deny this ; Thou must consent to it ; Thou hast nothing to say against it ; Where art thou now ? On Gods side, or on Baals ? for Christ, or for Mammon ? For Righteousness, or Unrighteousness ? Wouldest thou but have every one have his Own ? Doest thou not covet thy neighbours goods ? Wilt thou own the power of as much Religion as in one verse of one Chapter of the whole Bible; Render therefore to every man his due, Rom. 13.7? Keep to this, I desire no more : I know I have gained with thy honesty, thy sure vote for tythes, and for ever hereafter ; Hold to this Concession, and be constant, thou wilt never hold up an angry hand nor finger against them, or but for them, unless thou change thy minde to petition against the petition. Thou wilt not I suppose be wiser then the Law, mangle the Royall Grant, or deform that Petition of Parliament : If thou do,  
1. Thou art unjust, because not impartial : 2. Inconstant, because even now thou chosest to submit Hereto, and madeit use of it : 3. In plain terms little better then a fool ! Bear

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with my plainness, thou wilt rather thank me for it, when thou shalt see I intend not Reviling, or Reproach, but necessary home caution and admonition. Resolve with thy self, There is none so highly such, and dangerously too, as he that thinks himself wiser then the Law: Which is, as a Lord Chief Justice said, *Summa Ratio*, the strength and Quintessence of Humane reason applied to the common good; and what must He needs be then that goes on the contrary part? that undervalues it? that opposes it? that censures it? and instead of obeying the Oracle, quarrels with it? Laws are made to be revered, not disputed of, obeyed, not judged, submitted to, not censured by every forward man, scarce by every Congregation of men, scarce by knowing, wise men: and who is he then that of his own private head dares busily controul and censure? abrogate and revoke, repeal and establish the whole or a part, (as much as seems good unto him, be it what it will) of a Wise Parliaments Petition, a dead Kings Concession, the Statute Law, the Canon Law, the Common Law, that whole body that hath ruled all actions and possessions here? Thinking, such a part may be changed, another spared; The great Charter was well thought on in some things; The Petition of Right was part as it should; K. Edwards old aged and reverenced Laws, that had so many requests made for them, so many bloody battails fought about them, and were wrested by the people into the Coronation Oath, may now be advised of: I see a way, not spied by any since Christianity came hither (and yet they had the voice of the Spirit, in the Word of the Gospel) of Civil Justice and Righteousnes, I will make Laws, change Ordinances, reverse Rights, new-mould properties and dominions, &c. though all that is be troubled, &c. and the Petition for every mans right shall not hinder: What arrogance is this? What intolerable presumption? Does it become a private man! a single man! a simple man! Any man! Were not obedience better then this sacrifice? To be ruled by the Law, better then thus to quarrell about it? Say but this one thing, Every man shall have his own: and I have obtained my end, and wish all unsaid hath (to thy offence or otherwise,) not  
(Sa  
wife  
but  
to b  
ly,  
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not tended hereto. Say but Right shall be done as is desired, (*Suit droit fait come est desire*, as the King:) I will not be wiser then the Law but follow it: I will not judge the Rule, but be ruled by it; 'tis the blessed Ordinance of God, where-to I ought conform, and must, and will, ingenuously, and fully, the whole and every part, and then we are met and friends. Especially the Petition of Right, let no one be defrauded of his part of that, No One, and then be the issue that God will give.

## C H A P. XXVIII.



And now it may be time to look forward, but first a glance or two backward, that we may not lose our selves, to see the way we have already gone. I hope it is either made evident, or at least much hath been said for it, that Tythes are Civilly, Politically due; They are so, for they have been given; they are so, because that gift hath been confirmed: confirmed by the common Law (in its Cradle:) confirmed with the confirmation of King Edwards Law, confirmed by the Church Law, of Authority sufficient, and now lastly by the glances of the State. But by-blowes I confess these last, yet as they have been set on, I hope reaching home, till of late some were direct in Henry 8. and Edward 6. time, (yet of force;) and so is also the Petition of Right, it being taken they were before a Right. Descend we now from publicke to private, and see what the Sages have said, who are either Law, or after next to Law. The Romans had their *Responsa Prudentum* taken into the Digests which although they were at first but the issue of private thinkings, given by single men upon occasion in decision, yet with time they got credit, and being found usefull, and meetly well agreeable with reason (the great Standard even of Rules,) They were at last taken into the Rule, and urged

ged as the twelve Tables, or the *Senatus consultum*, of original and ruling Authority for themselves : So and by the same degrees have some mens credits and sayings been advanced with us, whose *ipse dixit* is next to Oracle, and their private voice so highly advanced as to be for Authority and Rule next to the Publick of the Kingdom. We shall not be long nor curios in this search; for still the Publick speaks louder to Credit than any Private ; and why should we care much for Silver, when we had plenty of Gold before ? or look after even the Judges, when their Masters stood ready, yea the Rule of the Judges Masters in publick Agreements subservient to justifie our Assertion and undertaking ?

And Lord chief Justice *Cook* is here first, (for we will now take leave to proceed *ordine retrogrado* according to licence reserved) He is now become almost a good Authour ; but because his opinion and practise are both in fresh memory with many both as to Pleading, Council, and Judgement, the less would therefore be said of him, because known. In 2. of his *Instit.* alone he so comments on four ancient Statutes, sc.

(1) pa.489,490.

(2) pa 610, 611,

612,619.

(3) pag.6.9,&c.

(4) pag 648,&c.

(1) *Circumspecte agatis*, (2) *Articuli Cleri*, (3) the 18 Ed.

3.7. touching the *Scire facias* from the Chancery, and that

(4) of 2 Edw.6.13. that none that knows the occasion can

well forecast any doubt of the event ; none that considers the

Text can much doubt of his Comments, unless he will make so cross and absurd interpretation of his likely meaning, as that he chose his Theme to go against the *Supposition*, or meant to darken and contradict what was taken in hand to expound and illustrate : such were *Commentarii* indeed rather then *Commentaries*, strange inventions : but He raised his Doctrine according to his Text, and prosecuted it punctually, as he had raised it. Let them heed him well who alleadge him frequently, accounting him Authority in one part as well as another, or else the World will account them I know what, Partial, I mean ; That All; and that's true enough, That they do but instead of representing his sense fully as they finde it, pervert it, picking a Posie perhaps of the sowrest flowers, and leaving out what is not to their advantage, or to their disadvantage, insinuate, that is not, which perhaps they would not have. Sure be

Be thought, spake, wrote, and judged, that Tythes are civilly due, when he shunned not to declare they were every where due, (1) *Jure divino*. To omit his own References to his Reports. Be Sir Thomas Smith next, a Doctor of both Laws and a principal Statesman; His Description of Englands Republicke passes with good credit, in the last Chapter whereof he describes the Court Christian, acknowledges its jurisdiction, sends matter of Tythes thither as a part of the Work, and if once he had them there, he knew, being not onely *rapaces*, but *rapacious*, what even to Mint and Cuammin, would become of them. The Authour of the Dialogue between the Doctor and Student is (2) said to have been Mr. St German. It was wrote in Henry 8. days, not toward the end, and for the solidity and depth of it may passe for one of the very excellent and singularly judicious pieces of that most excellent Learning. Now He admits Tythes as consequentially due upon that account of (3) Ecclesiastical Jurisdiction, and this reducible to the second ground of Law received here, which is, the Law of God, and though the Student cannot afterwards well away with the Doctors *Jure divino*, yet by Ours, Positive, and here, he makes no question. For by the Law of Reason (one of the Grounds he had made of the Law of England before) he would have somewhat; for the Labourer is worthy of his hire, and then by the Law of the Church, (This I question not how reasonably, but thus twas settled, and the Constitution prevailed,) And he gives reason for all: For (4) there is no cause (he sayes) why the People of the new Law ought to pay lesse to the Ministers of the new Law, then the People of the old Testament gave to the Ministers of the old Testament: For the People of the new Law be bound to greater things then the People of the old Law were, as it appeareth, March. 5 20. And the sacrifice of the old Law is not so honourable as the sacrifice of the new Law is; for the sacrifice of the old Law was onely the figure, and the sacrifice of the new Law is the thing that was figured; That was the shadow, this is the truth. And therefore the Church upon that reasonable consideration ordined that the tenth part should be paid for the sustenance of the Ministers in the

(1) Report 3. fol.  
49 6. in the Arch.  
Bishop of Can.  
Cofr, avouched by  
a London Man  
for such late an-  
swer to a Doubt  
about the assess-  
ation of Tythes, p. 17.  
And in the same  
Report fol. 45. in  
the Arch. Bishop  
of Winch. Cofr,  
alleged by Spelm.  
de non remuner-  
dis Eccles. sed.  
16.

(2) By Dr Co.  
well in his Inter-  
pret. on the said  
Doctor.

(3) Dial. 1. chap. 2.  
fol. 18. And in the  
new addition to  
that Book printed  
1531. Heretell us;  
In the Kings  
Bench & Com-  
mon pace they  
will suffer no  
illme to be im-  
ploied, specially he  
be a person  
whereby he  
Right of the  
Church may be  
tred, howver  
that in the Ex-  
chequer some-  
times they  
have done o<sup>r</sup>  
threwise.  
Addit. 5 fol. 14.

(4) Dial. 2. chap.  
33 fol. 165,

new Law, as it was for the sustenance of the Ministers in  
the old Law. So howsoever it is a Due, and he is there dis-  
cussing the equity of the Statute of *Sylva & cedna*, which al-  
though he defend, yet no more, and in that enough, as before  
was said, speaking of it. For if there were Assertion, thata  
Prohibition should take place in that particular Case, there  
was implication in others it should not ; a by-confirmation,  
here and there, and in neither can be doubt of what I desire.  
Ascend at next step up as high as *Fleta* and *Brahton*, for we  
are now among particular fallible men, the Credit of whose  
Vote is not to be compared with the Publick, and therefore  
we hasten accordingly, yet so as we know what sway these  
bear in Judicature, and that they over-rule the very Rulers  
and Judges : *Ego vero illos veneror, & tantis nominibus semper assurgo* ; as I believe, after Sir Edward Cook most of the  
chief Justices have been ready to say, and I do unfeignedly.

(1) Lib. 2. ca. 60.  
Sect. 27, &c.  
p. 131.

Let *Fleta* be first, and He (1) speaking of Contracts and Ob-  
ligations by them, and an Action of Debt justly grounded up-  
on both gives the *Tryall of Tythes* in that Court, will surely  
give Them. *Ex hujusmodi autem obligationibus, promissioni-  
bus, & stipulationibus oritur in curia Regis quadam altio, quo-  
dicitur Placitum ex debito, eo quod spectat ad Coronam Regi*,  
saith he. But except, *Nisi sint debita à testamento vel mari-  
monio suborta : que quidem in foro Ecclesiastico habent ter-  
minari, sicut & omnia que mere sunt spiritualia* ; as Penance  
for sin, though pecuniary : So for Church Reparations, &c.  
29. Item si Persona, (that is, that living Man, who as one  
seen and known, stands forth and acts for the Church, which  
is always in it self a dead Corporation, a Suppositum, or No-  
ens, without any real substance, and must therefore have a  
seen, known, living Executour, whose name may be used, and  
being cloathed with Circumstances under being and existence;  
*In that name and under that Personality may do sundry things*  
which otherwise conveniently could not ; As give or take,  
gain or lose, do or suffer ; the Churhes Man, we may sole

(2) *Laicus igitur* him; Rector is another thing (2) implying duty, and ground-  
tur praesentata ad  
Ecclesiam vacantem ut praesentatas Ecclesiam Regas, & Episcopus eam dat, sc. praesentata n. admisit  
Regimen, & instituit. Brahton l. 2. c. 23. f. 53.

ed upon supposition of Power. Now if that Person or Church  
a Man petat à Parochianis suis debit as decimas &c consuetas,  
(in the very words of the Statute of Circumspecti agatis)  
vulsi Reclor agat contra Rectorem de decimis majoribus vel mi-  
noribus, dummodo non petatur quarta pars valoris alicuius Ec-  
clesia vel decimarum : (for then, (if also the Churches be of  
severall Patronage, not otherwise,) the Indicavit takes place,  
and the Right of Tythes must be tried in that of the Advou-  
son, between the Patrons whose Lay interesse is in question :)  
And of these all, Sect. 32. *Hac autem praeципue in foro Eccle-  
siastico habent terminari, non obstante Regia prohibitione.* It  
item the nature of them was such, that if they were drawn  
aside they could not rest there, but must return to their pro-  
per chanell, and with other things of the same nature have  
properly and together their discussion and determination in  
the Court of Religion: And remember this all along, That, as  
the Philosopher iayes, that which gives the Cause (sufficient)  
gives the Effect; That which gives the means to compasse such  
an end may be interpreted to allow and give virtually that  
end will be so wrought in and brought about by those means;  
Even so imediately, that which gives the Jurisdiction gives the  
work, and effect thereof; That which gives the Triall gives  
that which will come of the Triall, be it what it will; (virtu-  
ally, and in the sufficient and necessarily producing Cause)  
Which is also of use in that which follows from the same Fict-  
ain his Citation of the Statute of Westm. 2. cap. 5. Where ap-  
proving the Clause before of the Indicavit, and ruling power  
thereof, he yet (1) makes the bottom, after discussion in the  
Kings, to be the Churches Court; and as that shall sentence  
such or such a Patron to have right or wrong in the Advouson  
of Tythes, so after the binding sentence, though regulated  
before, must be formally given in Curia Christiana for them.  
9. In casu autem quo Rector Ecclesie impeditur ad petendas  
decimas (saith he) in vicina Parochia per prohibitionem de In-  
dicavit, habeat patronus rectoris sic impediti breve ad peten-  
dam advocationem decimarum. & cum disputationaverit, proce-  
dat postea placitum in Curia Christianitatis quatenus dispu-  
tatum fuerit in Curia Regis. The final sentence must be here,  
though

(1) Lib. 5. ca 17.  
Sect. 9. pag 330.

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though the discussion be elsewhere, as upon a Verdict at the Assizes the Judgement Postea is given at Westminster, though the Trial were in the Country. Afterwards, then which nothing is plainer, treating of Exceptions to Pleas, among the

(1) Lib 6.ca.36.  
scit. 7. pag 418.

(2) Cap 37.  
Sect. 3.p.429.

(3) Before p.202.

(4) Braston 15.  
tract de exceptio-  
ca 10-11.408.

first is the Court (1) *Erit igitur a digniori incipiendum, scit: à Jurisdictione judicantis & persona Judicis, cum ipse sit pars principalis Judicis.* And what is that? it follows, (2) *Cum autem diversi sint Judices, estimare debet quilibet an sua sit Jurisdictione, ne falcem ponat in messam alienam. Index autem secularis de rebus spiritualibus cognoscere non debet.* (The greatest reason in the world) *Decima autem in quantum decima, & ris testate in possessione testatoris tempore obitus sui existentes, &c. in foro ecclesiastico debent intentari.* In a near case indeed, not : as if the Tythes have been once sold, for then *Per venditionem jam translata est spiritualitas in temporalitatem, & quo casu locum habebit Regia prohibitio ad inhibendum judicibus ecclesiasticis ne in cognitionem hujusmodi catalogorum procedant, &c.* If sold, they change nature, and by consequent Trial: and much there follows of such prohibition and permission, but of Tythes as Tythes nothing but as before. From (3) *Bra-  
ston* (to come to him next) four of five places were given before for permission of Jurisdiction decimal hither, which have all their use here, to which may be added this one, (for those I repeat Not, but remit to them) which speaks thus. If a Clerk wrong another of Tythes, a Prohibition shall not lay ('tis in the Treatise of granting Prohibitions,) because there is no wrong to the Patron in his Lay fee, which is his Advouson ; (4) Sect. 6. *Item locum non habebit prohibitio de recenti spoliatione, ut si clericus clericum spoliaverit de decimis vel a'is de quibus cognitione pertinet ad forum ecclesiasticum, quia de hujusmodi restituzione non generatur praedictum patronus, quantum ad jus advocationis.* And this granting the scene of Trial is still upon the matter a granting of all: the sending for Trial to where before it is known what will be there said, a virtual probation and confirmation of what shall be there done ; As he that refers to the Admiral Court does, upon the matter like and approve the Civil Law so far forth there ruling. And our state having many Rules *de factis*, but few *de legatis*, or of Wills

Wills themselves, sending, in its Own want, to Another place, and willing the Rules of the Canonist or Civilian shall take place, does interpretatively speak further, That what is there done and decreed is just, and by it self approved ; Even so the party grieved appealing to the Temporal Court, making his Case known there, Praying relief which is denied, His tenth Sheaf or Sheaf are like to be taken away, and upon Complaint, nor Parliament, nor Common Law afford him any comfort, but their Ministers or Consultations and Resolutions send him back to where the taking away shall be allowed ; What is this but mediately, remotely, and implicitly, but fully to approve of what is there done ? For they are presumed willing to do justice, and known able, but not interposing, do consent and partake in the decision they order to, be it where and whatsoever. So that it is no vain suggestion so often repeated, and necessary to be always understood, that the making good the Jurisdiction is the securing all, for all comes along with it, as *Mahomet's Alcoran* will bring a long Tenth with it to Religion and for Conscience in way to his Paradise, (but no Wine upon earth) and as the entertaining the Jews Law includes Circumcision, Passover, Pentecost, the Sabbath too, and even Decimals. And so have been the proceedings with us, That Court, and those discussions have used to bring in Tythes effectually, and not but ever ; Ask either the Lawyers or Owners, they who did judge or were judged, They both found the transposition of Wealth and Riches to be accordingly : Prohibitions if they were often granted, were seldom asked, and always denied, but if according to these Rules : The Judge was *Lex loquens*, the speaking Oracle, and nor did, nor would oppose, or speak or do otherwise : & to their cost always men found it to be most true. In the Manuscript before mentioned, with *Magna Charta*, and the other old Statutes, are also the Writ of *Indicavit*, and many other such Prohibitions grounded upon the same Reasons that are alledged in the Register, and leading to the same end, sc. of with-drawing Lay-inquiries from the Court Christian, the subject matter whereof is mostly Tythes, which shews they permitted in other Cases the Trial to go, where it would, and certainly did carry them. In the usuall

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(1) Et dicitur  
ideò Breve, quia  
rem de qua agi-  
tur, & intentio-  
nem patentes pau-  
cis verbis brevi-  
ter enarrat. Era&  
de Act. on ca. 13.  
Sect. 2.  
(2) Fol. 483.

(3) Fol. 488.

(4) Fol. 489.

Registers are inhibitions enough composed so, that none of them will vary any thing; they are (1) Briefs, and give the Brief of the thing in triall : In the Book of Entries The Declaration sets forth great Complaints for suing in the Court Christian for tythes of Oakes under the Title of *Sylva cadua* to the disturbance of the King, &c. but meddles no further, fol. 226. & f. 489. Restraints there are enough for suing for (2) Annuities because they were *De catallis & debitis quia non sunt de testamento vel matrimonio, &c. in lesionem corona & dignitatum nostrorum*: but Tythes are spared, not a word of them. So far (3) Debts, alleadging this reason, and under this danger, *Ma- chinans nos & coronam nostram exhibere, & cognitionem que ad curiam nostram pertinet ad aliud examen in curia Christianitatis trahere*: so for defamation, so for demanding Tythes of Lands discharged. But not else : so for recovery of Tythes (4) set out, and become Lay Chattels, yet so as in All still, no pretence was to impede the Jurisdiction of known due Tythes ; but if the Court were extravagant, and would meddle with what was Lay, then clog it with a prohibition that it might not exceed its bounds ; otherwise let it go on and proceed freely and fully without any manner of disturbance. And this I say, hath been the known way of proceeding; view their Books, ask the Lawyers themselves, they will allow (though they may finde some fault in my expression) the reality of things, and that what I aim at is right, though I may faulter in the way of expreſſion : Nor is any thing more certain then the Restraint of their Restraints, the Prohibiting of their Prohibitions, that they should not step forth to hinder the Court Spiritual in that was such, or belonged thereto , the certain Consequent whereof was a known Recovery, and translation of one flice, sheaf, lamb, or thing whatsoever of ten, from one man to another. This was a little extravagant, but I prudently forecast, and conditioned not to be tyed too strictly to Rules of Method though of mine own making : Too much exactness may be as incommodious, as altogether loose: This belongs to what I was upon, the Jurisdiction of Tythes, and thereby right : and to the reflections of the Temporal State, as it stood separate, and favouring glances (of which sort only is

is all in this Cell we may properly look for) and these, though not alleadging one quarter of that is, seem to make good what was undertaken abundantly.

## C H A P. XXIX.



ND this of the first branch of Donation, made out by many subsequent confirmations, before, under, by, and since the beginning of the Common Law, as well before the Conquerour, as since under these four heads of, 1. The Confirmation of K. Edwards Laws, (wherof these were a part :) 2. The Church Decrees, (authorising the King, licensing the State, looking on and approving all the other power that was:) 3. The Acts of Parliament, such as looked this way out of their direct way from the great Charter to the Petition of Right, inclusive:) 4. The Learned Expositors, taken for Oracles of Law particular, as *Cook, Fleta, Bracton, &c.* Adding some hint of proceedings accordingly, and especially asserting throughout the Ecclesiastical Jurisdiction for them, which will alone induce and make good all the rest. All which together has been so much, and the Roots of this Right so far shewed and evidenced to be spread hereby, that few mens estates I beleieve can hardly shew, or colour for the like, and yet the men possess and enjoy what they have in peace and firm security: for through all the good old Laws of the Land these roots are hereby manifest to have been dispersed, and as it were through every part and member of our English State and Corporation; Fees, Socages, and Serjeanties are but of yesterday, the Children of Power rather then Right at first, and take their utmost date on this side the battle of *Sanguelac*, besides age and to us unusefulness, affording other infirming considerations enough; Mannours and Fee-farms of not much greater reason and equity; and both Copy and Free-hold chiefly

## The Civill Right

grounded on (as they are come to us, & understood to be pos-  
sessed) the *Word* of the Law : But these were voluntary  
Concessions of the highest powers, in their solemnest meet-  
ings, long since, upon so reasonable consideration, as to e-  
stablish the doctrine of the Bible, (and so they yet stand to  
bear it up like the pillars that supported *Solomons Ivory*  
*Throne,*) Behither and beyond the Conquering day have  
held up strong and fast in despite of all storms that have  
been since our Nation believed the Bible, (whether to de-  
cay with it time will shew,) and if the reasonable and con-  
tinued, willing and authorising powers of the Nation, all  
of them, could by their pactions (the surest ground) create  
a Right, Here it must be *Sure and Firm*, such as the like  
is scarce to be found again in our Community. All could  
not have been deceived, nor force in every thing 'tis very  
like mis-placed : Laws, Canons, Acts, Ordinances, De-  
crees, Statutes, could so many effectual, and in otherca-  
ses sufficiently made Rules of Right be here made, and yet  
not made, and yet have born rule with obeyed power ? If  
Civill Right be stood upon, could All so Many operative  
and continuing causes thereof have wrought from time to  
time kindly and vigorously without any effect, or but *Mus*  
contribute and do what humane Pactions and Concessions  
could, or any thing below the footstool of Gods Throne?  
The *Divine Right* I confess is of another sort, more awful,  
it separates clearly to *an higher kinde*, and we look upon  
it as (more venerable,) founded in *God*, and partaking  
therewith of his constancy as well as holiness, must be al-  
ways without shadow of change *the Same*, Nor can be tou-  
ched upon rudely with profane hands without a *Relative*  
*violation* of that Majesty above from whence it proceeds:  
(And Therefore men should be very wary how they attize  
this seal of *Heaven* to every *Imagination* of their *Own*,  
stamping the Character of Divine Right upon disputable o-  
pinions, entituling God thereby to their perswasions, per-  
haps errours of fancies, and but what they strongly con-  
ceive must be Thus of equall authority with Divine Oracles : Highest presumption !) But speak of *Humane Right*,

what

what has its firmness whence all lower titles and inclosures have, the *agreeing Acts of Men*, and *Mutual Humane Stipulation*; Of this sort I believe we shall seldome finde any thing better grounded or faster settled then This, (And if seconding and conspiring rules of common equity can contribute any thing to the backing and strengthening of what is so placed and settled, these not wanting neither) and by as good title as any men have any thing with us, our tribe of *Levi* has here in *England* the same to the Inheritance of *Israel*. Equall in this too, that 'tis as good as the best, and if we had any better or higher, this would no doubt come out with the highest: But we have none; Our Tribes pretend not to a partition from Heaven; nor Dominion, or Property, Lordships, Mannours, or Honours to any thong to be cut out by but inferiour, lower, inconstant rules of arbitrary good Will and Pleasure, guided by compact and Humane Wisdome; And therefore *Levi* hath no reason to take it amiss if in this he be not preferred above his Brethren to a right of another sort (if it should prove so) and higher strain having a touch of sacred and extraordinary, sealed from Heaven; But rather bless his God if he have done full out so much for him, as for others, (and as he did anciently heretofore among his own people,) giving him an *Equall Highest Claim and Right with the Best*, and as near Divine as any of his Nation. Which is both done and cleared certainly, and should serve his turn sufficiently and abundantly.

## C H A P. XXX.



OW proceed next to other helping supports amongst men, firm enough in other cases to create Right, if these hitherto should fall short of reaching that aime, though of their nature they seem not so well and aptly proportioned to so good an end, and they are Possession, and Prescription. Against which many things have been said by many, chiefly this, That they seem but a kinde of necessary Politick devices for *advantageous peace* and as it were *Quiet injury*; settling many a man in that he hath really and truly no just title to, and by consequent wedging *Him* out necessarily upon whom that right was devolved, or in whom it is inherent: Which yet notwithstanding, and all that can be said against them, they doe passe, and are allowed, and a man is thought rightly to possesse and enjoy what by so, and no other means is come unto him or seated and settled with him. For though it may seem most reasonably *Mine*, (and is,) which another makes over unto me, or which falleth to me by inheritance from another, or is escheat, (that is, reversed) or purchased, or given, &c. wherein by the contrivances of the Law, and reasonable devices of honest wisdome, that title which was really and truly existent in another is conveighed over unto me and vested in me, and so I have, as twere by removal, *His right*; yet when I shall have and enjoy any thing upon this naked presumption, That it is *Mine*, because I Have it; or, I ought, Because Long I have Had it; These as they are with cautions and limitations served in, do not onely put an end to many differences, and to more advantage then what

what has more of strict right in it; But having Law on their side, do no doubt bring along a true Right with them, and I may, by reason of that Law, (the foundation of All right,) have, enjoy, possess, defend and keep against all men, what is but so settled upon me, upon these and no other pretensions.

The first of which, the second ground in all of the Civill Right of Tythes, is Possession: a good plea in other cases, and so not to be despised here, which Others hold forth as sufficient, and One may as well as another, affording this argument not easie to be answered or evaded; Tythes are belonging to our Tribe of Levi, *Because they have them*; They are Theirs, *For they are theirs*; They possess them, *Therefore they have right unto them*. For it prevails, (as said,) in Other cases, why may it not also Here? Other Men defend themselves with no other shield, being in, against invasion, or recovery; therefore may these: And if having his little loaf in his hand made up of few grains, Gods Minister account it his Own by Possession meerly, why may he not as well as his neighbour, who holds nine times as big upon this title often and by no other, and yet will not part with it?

But for understanding these things the better, and therewith some other, As of Donation before, it may be no les expedient to premise here sundry things alio of Possession in general; The nature of it, the force it hath, the equity thereof, and sundry other such things, that so the generall doctrine may a little strengthen that particular we are to insist on.

Possession then, saith Cujacius out of the Roman *Gallus*, *is the use of a thing, if so be we take use for the one-ly holding and detaining it, not for the enjoying and using which are different and somewhat farther.* I understand by it that we call Having; as Things Corporall by taking them in our hands, Incorporeall by making use of them upon occasion; which when we so Have and Handle the one, or make Use of the other, we may be said to have, hold, detain, occupy, or possesse them. Which such having and pos-

*Placer definitio  
Elii Galli, Pos-  
sedit est usus rei,  
si modum ac-  
cipit pro deten-  
tione, sive ut in  
his liberis scriptis  
est duabus locis,  
detentio, non  
pro eo quodgraci  
Xenoph. dicunt,  
ab usu enim hu-  
iusmodi possedit  
plurimum distat.  
Parat. ad F. de  
adquir. vel amic-  
tend. possessione.  
Vid. etiam para-  
tit. ad Cod. lib. 7.  
tit. 32.*

## The Civill Right

fessing (to note so much by the way, and in the very entrance) that it hath beene here of and belonging to the Ministers of sacred things, as before, and to others in their right, is I suppose doubtfull to none but he that is ready also to doubt, Whether there have been Harvests? Whether the Sun have shined? Whether the four Seasons of the Year have had their vicissitudes? or the *Blessings of God* been reaped by *Men* who have in gratitude returned to *Himself* some of the fruits of *his own bounty*? I except onely those who are to be excepted, and they are who claim effectuall exemptions; As thole that succeed the Templars, Hospitallers, or *Cistercians*: that inherit a Custom for a *Modus decimandi*, or (1) *De non decimando*, (if in Corners this hath with us perhaps prevailed anywhere,) and some such other: But for the general, 'tis known the use hath been of as wide extent to set aside One, as to carry home Nine, as distilled as to plow, sow, reap, and feed, And *tangam de jure Communi*, as was wont to be put into the Libel for recovery, Commonly prevailing all over the Kingdome. The Lord of a Manor hath not more usually taken up his quit-rent once a year, and thereby secured his Right Perpetuall, nor the Landlord his Farmours rent, nor the Merchant his debt, then the Lords Minister these Dues for his heavenly work, (and he hath not been wont to require them of *Courtesie*, but take them as Due,) or somebody else in his right, and this wall over and everywhere without delay, dispute, or denial. Which *Postulatum* was need to be not proved, but called to remembrance: And this done, proceeding to possession it self, the Great force it has in the world, and by consequent may here, is not hardly discernable from the heeded truth of these following *Positions or Observations*:

1. That it gives Right.
2. Was the first Natural Right.
3. Is a very Right, able to endure examination.
4. Defending it self against all comers.
5. Even against the true owner, sometimes, (*scil. at last.*)
6. Against

6. Against whomsoever at any time that hath but equal Right.
7. Against all the world still till it be evicted.
8. And enables a man to keep what he could never have gotten.

This force it has, and it seems a great force; The simple assertion was first, *It gives Right*, And it does so: for in some cases a thing is Mine, from or for no other reason, but because *I Have it*. If another Had it, it were *His*, (as now 'tis Mine,) But because I have it, it is *Mine*, and *not His*; and it is injury and wrong to deprive Me of it. (1) This Book, That Field, This Garment, or Sword, or Diamond, my Hand gives it me, I have right to it in Conscience, because I have it; and as any other thing is another mans by his plea whatsoever, so these Mine by bare Possession. Which chiefly prevails in vacuity of title: for then, *Quod nullius est, id jure naturali occupanti concreditur*, says (2) *Gaius*, That is No ones and comes in my way, *seems naturally to come home to Me*; as Beasts, that are wilde, Fish, Fowl, &c. which if I can take, no one will doubt my right to Own them. Nor skils it much (3) where: for though I might have been hindred coming into another mans Field, what yet I take there is for my self, I might have been keep out, not from my fortune, The wrong was in the intrusion, not in what I have gotten. But then I must fully have it: For (4) if I wound, ano-

*knowing one is by possession.* Institut. lib. 2. tit. 1. sect. 11, 12. *Iure autem gentium* five naturali dos mina rerum acquirentur multis modis: Imprimis per occupationem eorum quae non sunt in bonis alieciis. Bratton lib. 2. cap. 1. sect. 2. & vid. Fle. lib. 3. cap. 2. sect. 1.

(3) Nec in reell feras bestias & volutes, utrum quis in fundo suo capiat, an in alieno. Placit, qui in alterum fundum ingreditur venandi aut occupandi gratia, potest a Domino si is prævidet prohiberi ne ingrediatur. Quicquid autem eorum ceperis, eoque tuum esse intelligitur, donec tua custodia coecetur. Cum vero tuam evalerit custodiā, & in libertatem naturalem te seceperit, tuum esse definit & rursus occupantis sit. *In his Vbi S. c. v.*

(4) Illud quodcum est, an fera bestia quae ita vulnerata sit, ut cepti possit, statim nostra esse intelligatur. Trebatio placuit ita in nostram esse, & eoque nostram vident, d' nec eam pertequeamus. Quod si desierimus eam persequi, definire nostram esse: & rursum finiri occupantes. Itaque si per hoc tempus quo cam persequimur, aliis eam ceperit eo animo, ut ipse lucrat, futrum videri cum nobis commissile. Pierisque putaverunt non aliter eam nostram esse, quam si eam ceperimus, quia multa accidere possunt, ut eam non capiamus, quod verius est. F. de adquiriendo rerum dominio. L. 3. Sect. 1. Vid. Institut. Vbi Sup. & Bratton & Fle. ther

(1) In e natura  
rali prime ovo an-  
tequam essent ju-  
ra civilia, id est,  
leges, sicut statu-  
tum, ut quamcum-  
que terram calca-  
verit pes tuus tua  
sit. Gloss. quia  
naturaliter, ad F.  
lib. 1. tit. de ad-  
quend. vel amici-  
tend. possess.

(2) F. de adquir.  
re rerum Dominio,  
L. 3. Singulare run  
autem hominum  
res multis modis  
sunt; quarundam  
enim rerum do-  
minium nancisci-  
murjure natura-  
li, &c. And of  
the overall such  
natural ways of

ther take, *He that possesses must onely have the benefit of Possession*: and so I must keep, else I have lost what I had got. So in the wars, (1) the spoils of an Enemies Camp are Mine, so much thereof as I can lay hold of: Those Captives à Capiendo, or (2) *Mancipia à quod ab hostibus manu capiuntur*, because they are touched to Property; *Servi alio* (à (3) servando, nou à serviendo, from being kept, not made slaves of,) are all reduced within the compass or restraint of Property, to bee disposed of as the New Owner pleases; But so long as they are kept again; for if they break out and return again to their former liberty, they are now again their Owne as before, and not His whose they were, who hath lost that whereby he had them. These things may (4) have some speciall way of ordering with us; but then generally they prevail Thus abroad, and

(1) Item ea que ex hostibus capimus, jure gentium statim nostra sunt: adeò quidem, ut & liberi homines in servitutem nostram deducantur: Qui tamen si evaderint statim potestatem, & ad suos reversi fuerint, pristinum statum recipiunt. *Instit. ad. fol. 17.* *O. & Bracton and Flota have also the same.* Habet etiam locum illa species occupationis in iis qua ab h. sibi capiuntur, &c.

Item que ex animalibus dominio nostro subiectis nata sunt, eodem lute nostra sunt: Idem etiam in insulis in mari natu, & in silibus, & in rebus pro derelictione habitu, nisi conuento. &c. Bracton ib. And elsewhere: Possesso aliquando jus partis, & pro possiditione præsumitur de iure, *Id. lib. 4. nat. 1 cap. 2. fol. 7. fol. 160.*

(2) *Instit. de iure personarum, sect. 3 serv. lib. 2 tit. 4. & F. de statu hominum, lib. 4.*

(3) *Servorum appellatio ab efluxu, quod imperatores nostri captivos vendere, ac per hoc servare, nec occidere solent. F. de veteribus signif. l. 239. & vid. Instit. & Digest. in locis citatis.*

(4) See Bracton and Flota in the places cited before.

with Us too in some and most cases; Nor want we instances of Right of Land so gained meerly by vertue and power of occupancy. For although all were originally in the Crown, if out, derived from it, and so upon extinguishment of the derivative title, as Escheat should have naturally reverted to whence it came, yet in some cases and by some circumstances it proves not so, but a title may be (5) gainable and tenable by Entry as they call it, and a man Have and have Right to Land meerly by Possessing it.

(5) *Cancellarius Bacon gives an instance, IV. 108. an estate is granted to one*

*Man for the life*

*of another, and the first dye without disposing his Right, nor Heir, nor Executor, nor Reversioner can have it, So it is he that lays hold of it. 1/2 of the Law, pag. 24. See the example at large.*

2. I said moreover, Possession is the first and naturall title: Nothing is more Naturally Mine then what I do lay hold

hold of. *Justinian* (1) taught me so, and *Thence yet, what we take is our Own, as hee has from Labeo. Ecce effectus possessionis,* the (2) *Glos there bids us mark it, and it is remarkable: For even beasts, we see, will rarely exclude the Possesflour:*

*They have onely the Law of Nature, they skill no compacts or force of agreement, yet they observe (whence but from natural impression?) for a kinde of right by Having; whence though their ravin be greedily set, we shall finde they cease to pursue what they see another has got.*

3. Yet more: this title is firm and solid and will endure the touch of Examination. 'Tis not a fraud or disseisin, which are wrongs, and have their known remedies, but a very Right which the Law looks upon and approves, and more then permits, justifies and protects the possessor. If the other are once searched and found, they are lost, but this how much the more it is examined and known; is so much the more approved and justified.

4. Against all but the true owner at first, though the bottome of the claim be nobetter then in some regard an unjust entry. The words of the Law are such: *Hee (3) that hath possession of Land though by disseisin, hath right against all men but he that hath right.* Chancellor Bacon (4) addeth also, that whether he ouerted any one of his quiet possession, who is properly a Disseisor, Or stepped in after a Possessors death before his heir, who is an Abator; In each of these cases whether Disseisor or Abator possessing and dying possessed, *His heir hath gained the right to the possession of the Land against him that hath right, till he recover it by fit action at the Common Law.* And if it be not sued for within sixty years after the disseisin or abatement committed, *the Right Owner hath lost his right by that negligence.* If either of these, the Abator or Disseisor, be excluded by a third invader, Is not now

(1) Possessio appellata est, ut & Labeo ait, à se-  
dibus quæ possit: quia naturaliter teneat ab eo qui  
ei inficit: quam Greci γενετικὴ dicunt. . Domini-  
umque rerum ex naturali possessione capite Nerva fili-  
us ait: cujusque rei vestigium remanere in his, quæ  
terra, mari, coloque capiuntur. Nam hæc protinus co-  
rum sunt, qui primi posselli non eorum adquisierunt, &  
de aquâ, vel amittend. possell. in princ.

(2) Glos. Dominum. ibid.

(3) Dox. & Sm.  
Dial. i. ca. 9. f. 19 4

(4) Vts of the  
Law, p. 25.

## *The Civill Right*

this third person, a second Disseisor, his title good against those before, who were no better indeed then Usurpers? Answ. No: For to the two former the Possession gave, besides the present Having, such a Right that against All but the right owner it gives title to be as ground still left to recover upon again: and it shall not be excepted against such a man, He had no right, the thing was never His; For he Had, it Was, and He is to the second Disseisor an Owner and may out him, as having by his former possession, not so Good, an Equall, but a Better and Prevailing title: And this in favour of possession, which to all but the rightful Owner, gives true title, and may not be eva-

(8) Tract. de Aſſiſſa nova diſſeſiſiſ. cap 7. ſect 2. fol. 165.

the Rigitual Owner, gives true title, and may not be evaded or rejected. The question is put by (1) *Braeton* under this Head, *Who may grant a Writ of Assize?* (the known remedy of a possession, not an usurpation,) and upon Answer, That None save he that is possessed in his own right, no Guardian, no Fermour, no Servant, &c. He replies, *But whether then a disseisor dispossess?* It should seem not, for he had no title in his own right; indeed None? Yes; though not against the owner, against all else, and so is truly dispossessed, and of his right, and may have his remedy as of a disseisin: and this propter *commodum possessoris*, (or as *Fleta*, propter *commodum possessionis*,) and there is no exception against his wrongful title. Indeed such a one should not recover against the rightful possessor upon even terms, for he wanted ground to fight on, compared and contesting with him, and so things must remaine as they are: But when neither has true right, the possession (comparatively among themselves) shall create a right with the first to keep as his own, or recover being out, *Et Hoc pro-*

(3) Lib. 4. cap 3.  
scđ 5. pa. 317.

(3) Braxton Tra.  
Sup. ca. 2. fest. 8.  
fol. 161.

(4) Vid.lib. a.ca.  
afft. I. fo. 52,

pter *commodum possidendi*, onely for Having. (2) Fleta has the same, and the (3) former again, *Cum nenter Ius habet, melior est causa possidentis*: and (4) many other such things which I forbear to transcribe. All which and many such other do together so much favor & strengthen his right, who *Hath*, that if I am In any thing (onely In) and all the world against me but One Man, (*sc.* Hee in whom is the True right) yet I shall defend my self against them All, nor

can be justly ouited by any, but shall for Possessions sake and Because I am in, *sit fast*, (or if I am thrown out, Recover,) and this by Law, which may be bottome, good, and justifiable enough for me to rest upon, because it settles all things.

5. Moreover, against that one man, the true owner too in time; for (1) if the Abator or disseisor (*so as the Disseisor hath quiet possession five years next after the disseisin,*) do continue their possession and dye seised, and the Land descend to his heir, They have gained the right to the possession of the Land against him that hath right, till he recover it by fit action reall at the Common Law. And if it be not sued for at the Common Law within sixty years after the disseisin, or abatement committed, the right owner hath lost his right by this negligence. (For, (2) *Currit tempus contra de- fides & Juris sui contemptores*, as is eliewhere:) And if a bastard possesse quietly, and dye so, his Children shall hold a- gainst the lawfull Children and their issue. This still in fa- vour of possession: and (3) Bracton agrees thereto, that long, peaceable, and continuall possession locks the rightful Owner quite out: for there must be a time to end strife, and he has lost his time of regaining.

*nam, quandoque aliam, quandoque omnem, quia omnes actiones in mundo infra certa tempora habeant limitationem, de acquirend. rerum dom. fol. 52.*

6. Yet farther: Where many titles are equall The Possessours is Therefore Best; and if the scales hang even, the Advantage of Being in shall sway the Right also to that side where is the Possession; Not onely the Having but the Right: For it must be always a better title must evict that which is, as if I have footing any where, it must be a strength whose Greater power shall out me, and take possession of my room. Hence the (4) Canonist: *In pari delicto vel causa potior est conditio possidentis:* In equality of state the possessours is the better. And the (5) Civilia: *In pari causa possessor potior haberi debet:* much to the same. And

*de dannis, & par utriusque causa sit, (one must lose,) quare non potior sit qui tenet, quam qui per- iequitur? de verborum obligat. L. Silervum Stachium. Scg. Sequinus.*

when.

(1) They are the words of the most Learned Chanceller Bacon in the place before.

(2) *Flet lib. 2 c1.  
60 act 7 p129.*

(3) — Longa enim possidit. (sicut luc) patie lus possidendi, & to latitacionem vero domino pertinenti, quandoque

(4) Reg. Iur. Can. non. 65.

(5) F. de diversis Regalis Iuris antiquis, l 170. Dum queritur

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(1) Bracton l.2.  
cap.18. Sect.5.  
f.93.

when with us one contended for a Wardship, and one possessed, upon equal Right neither should have been outed, and then He was well enough was in, He kept what he had. For, (1) *Non sufficit quod petentes probent se ius habere, omnes, vel quidam eorum, ad hoc quod auferatur possessio a tenente, nisi sit qui probet se maius jus habere: Paritas enim juris non auferit se ipsam a tenente, propter commodum possidendi, & privilegium possessionis.* A stronger weight must be to fetch up the Scale when a Possession is settled any way: a parity or equality of Right leaves the thing onely where it was. Again, if an Action be begun onely upon pretence of

(2) Id lib. de  
Exception. ca. 19.  
Sect 6. f. 418.

Et si uterque Bastardus fuerit,  
tam petens quam tenens, & petens  
Bastardiam ob-  
jecerit tenentis, si  
tenens replican-  
do dixerit peten-  
tem esse Bastar-  
dum, nō potest pe-  
tentem le docere  
legitimum; alio  
qui nihil capiat,  
cum n̄ elior sit in  
hoc casu conditio  
possidentis, &c  
ib. Sect. 1. And  
see also before the  
very end of the  
Book de Aſſia  
mort. Anteſell.  
Agreeable with  
Flet. lib. 6. ca. 39.  
Sect 7. p. 433.

(3) Bracton l. 2.  
c 18. Sect. 2. f. 41.  
Flet. li. 2. cap. 15.  
Sect. 8. p. 202.

(4) If a man sell  
to two persons, who  
shall enjoy t In-  
dianus libro septi-  
mo digestorum  
scriptit, ut si qui-

dem ab eodem non domino emerint, potior sit cui priori res tradita est; quod si a diversis non dominis, melius causa possidentis sit, quam petentis, qua sententia vera est. F. de Publiciana in rem 19. Sive autem  
Sect. 8. duobus. Et cum de lucro duorum queratur, melior est conditio possidentis, de diversis reg. Jur. L. 168. Sect. 2. (5) Bracton fol. 162.

*Rem Domino vel non Domino vendente duobus,*

*In jure est potior venditione prior.*

The first Buyer had first Right, and shall carry it > agreeable enough to that of (4) Ulpian in the Civil Law. Nay, sometimes this carries a victory where there is no fast ground to fight on, and maintains the field stoutly, having onely this to say, *I am there.* 'Tis in the case where he that has no Title, sues against him that has but as much, and in possession, where can scarce be comparison, neither having any thing, and yet the Posseſſour Thereby has enough to carry All. (5) *Quia cūm neuter ius habeat, melior est conditio possidentis.*

And

And no marvell again then, if the (1) Emperour observed so much Convention to be for Possession, as that would sometimes wind in all the rest, and carry the whole business. These are the favours of Possession when in a double claim the measure of Right is on both sides equal; which seems to be grounded upon that repeated, and so much varied Axiome both of the Canonist and Civilian, or rather upon that reason upon which they both are founded, *In favour of Peace, to keep that in being, that is.* For if quarrelling men shoud be hearkened to in every motion, and but upon equal terms be heard with no disadvantage to him that begins the Fray, little would soon be left quiet among men; our nature is so peevish or weak, and many or most herein so very natural, that Contentions would multiply beyond either doubt of reason or hope of end, if there were not some publick devices and honest discouragements invented to choke and stifle them at the very beginning; whence prudently he that first stirs is onely assured of disadvantage to begin upon; the uneven Ground must give him so much the worst at first, that if his Plea be *no better then his Antagonists, it is in no sort good.* If his Antagonists be but as (2) good as his, it shall be better. For, *In (3) paritate Iuris prior admittitur defensor quam pars actrix:* In equality of Right none shall be dispossessed of that he has. And (4) *Favorabiliores Rei potius quam Altiores habentur.* If there must any favour be shewed, it shall be to the Accused: and if the Judges (5) cannot agree or be equally divided, He that is impeached shall be quit, though he be guilty; for if the Scales hang even, of proof and (6) probability, 'tis presumed for him that *Has innocence*: still and in all looking as it were with an *evil eye* upon those that move complaints, and in favourable supposition of that well that is; Hanging back with might and main from alteration upon *equall strength* (7) *In re communi potior est conditio prohibentis,* both must agree to stirr, or the thing stands) and One shall never draw forward so powerfully to alter and change, that which is, as another with equal strength shall hold back to stay things where they be, because *Melior est conditio possidentis;* if both be, or seem good, the Possessors title is thereby best.

(1) *Et quia longe commodius est possidere, quam petere: idem plenique & fere semper ingens exigit contentio de ip'a possesso ne.* *Commodum autem possidendi in eo est, quod etiam si ejus non sic qui possidet; si modò actione non poterit suam esse probare, remaneat in sua iure possessio.*

*Propter quam casiarum, cum obscuria sunt utriusq[ue] iuris, a causa petitur rem judicari solerit iustitia lib. 4. tit. 15. sed 4. ver. Responde.*

(2) *Cum per delictum est duorum, semper one ratatur petitio, & melior habetur possessoris causa.* *F. de diversis reg. l. 196.*

(3) *Foris lib. 2. cap. 63. sed. 1. t.*

*pag. 137.*

(4) *F. de diversis regulis, l. 167.*

(5) *Dicitur iudicata l. 28. Intra partes.*

(6) *Cum sine partium Iura obscura. Reo fas venduntur est potius quam Actoris*

*Iur. Canon. Reg. 2. 2.*

(7) *Reg. Iur. Can.*

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best. Peevish malice is apt to cherish melancholick Dreams of black Distempers every where, but the serenity of clear and firm wisedom is always mixed with that goodness that thinks most things well. That deforms all for amiss, that (looking on with an evil eye) it sees not well. This charitably inclines to believe well of all it findes not evidently ill: whence with aversion to change as little alteration is made as may be without apparent wrong. That must be *not so good but better and truer* which is promised, and he that is in possession of

(1) *In eo quod vel is qui petunt, vel is a quo petunt, lucratissimum est, durior causa est petitoris.* F. de diversis reg. Iur. antiqu. l. 33.  
 (2) A London Minister in his Refutation of a<sup>3</sup> Doubt, printed with Sir Henry Spelman of Tythes. 1. 19.

(1) wealth or innocence, unless there be greater strength to assail and remove then is to defend, let him keep fast and sure without any molestation in his present possession. But go on;

7. I said further, The Plea of Possession is against all the World everlastingly good till it be legally and orderly evided. So said (2) one in this very Case of Tythes not long since, honestly, judiciously, truly and very prudently: nor is it but fit it should be so: for if a man might be presumed wrong in, at any time he might be cast out: if one, then another: if by one, then by another: and so no one from any one could be safe at any time, or any thing constant, settled ever; no remedy therefore but all be judged right that is, and till orderly proceeding do cast out of doors, a man be presumed justly in his own home where he is. 'Tis one thing to have a Benefice void in Law, another thing but voidable, sayes the Canonist; the murtherer is not to be hanged presently, though he deserve death, and must die, and though I am in condition and may be cast out of my house, till by order I am so I ought to be safe and fast there. Do not (3) Equity and Reason, the Law of Nature, God and Man, All favour that in being till orderly decision of judgement be given against it? said he, whom some count next to an Oracle; and *Præsumptionibus standum est, donec probetur in contrarium*; Things are to be thought well, till the contrary appear; and where any thing is under the God of order, 'tis a fair likelihood it should be there, and we are reasonably and piously to believe it so, till new light shew it clear to the contrary. But one word more, and it is, That Possession shall in sundry Cases help a man to *keep* what by equal strength of title he should never have been able to

(1) Hooker in his Preface. Secto. 6.

get,

If he were out he should never make way to get in, but being in he sits fast, and out no man shall ever be able to put him. For in many Cases (1) there lies Exception (a ward to defend) where there lay no Action, (or effectual means to assail) A man may have power to keep another out, that could never (there) himself have got in; defend that Castle he could not take, and bolt his Adversary out by help within effectually, where himself could never get in, if he were out, nor can be put out, Therefore, because he is in. The (2) Father of our Law speaks to this purpose: *Item, & est alia ratio, quod qui rem petere voluerit, si caute sibi providerit, videat primo an aliquaratione nancisci possit possessionem: quoniam commodius est possidere, quam petere. Multi enim sunt qui si possessionem habuerint, se defendere poterunt per exceptionem: Si autem fuerint extra, vix aut nunquam ferè recuperabunt per actionem.* And these are the benefits, priviledges, and advantages of Possession, (no marvel if before observed the reasonable object of great ambition;) for it gives Right, the most natural, of proof, against all but one, and him at last. It sways the Scale in an equality, is safe and just, till it be evicted, and keeps a man whether he could never have been advanced. Which if all it seem unreasonable on the Possessours part, as giving advantage to the rich partially and settling men by Law in that they have no right to, as like sometimes it does;

1. Sure, we say, first, the Law is never unreasonable, but the defect is on our part, who do not apprehend that Reason is: the Well is deep, and we want to draw of plenty.

2. And for the unreasonableness here, it is without cause imagined. For it may be considered, and must be granted, 1. That the Stage is open, what is or is done in the World cannot but be known. 2. Men love their own. 3. Are apt to make out for it. 4. Have means to come by it. 5. In the honestest, surest, and best ways that could yet be found of Law. 6. Whether in Possession or Action what is not found amiss, is reasonably to be judged well. Now these things presumed and known, and withall it being seen, such a one Has; how unlikely is it but that he should and ought to Have, else we should not see him Have? or if the right were in another, the Possession, which

(1) Fregens a.  
nim est apud Ju-  
risconsultos ali-  
quem esse turum  
exceptione, qui  
non sit ipso Iure.  
Io-Calvin. Lexico.  
Iurisp p 731.

(2) Bracton. I de  
Action c. 12.  
Secta 4. f. 113.

*obj. a.*

*Aufw.*

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he cannot but love, must bee with him? If there were no Courts, or presumed Partiall, or men negligent, or the whole frame of things composed toward injustice, to make or let things alone ill, or not well, Then might we doubt reasonably, and against the Possessour cherish vehement suspition: but nothing being more evident then the above mentioned & to be granted assurances leading directly to the contrary, How can we but judge for what Is? and that the Law is reasonable favouring the Possessour as it does; (*Præsumpti-  
nibus standum est donec probetur in contrarium*, as before;) and that he hath right, for if he had not, as things are, hee should not have? I will not deny but some hard measure may be hereby meted out to sometimes, or perhaps wrong, But this in some degree may well be allowed the Soveraigne Authour of All our right: Better this then worse, (as worse would be if this were not,) and sith of two this way is the best, reasonably is it chosen though it be not in all regards so good as it might be.

This of Possession in general, and our loved Law about it, (as in every thing else, so here very amiable, and as bee said of truth, *Si oculis cerneretur humanis admirabiles exi-  
taret amores.*) But now some one may ask, what is this to our argument? That was of Tythes: How are They advantaged hereby? I answer, with the Apostle, *πάντα τοις  
τρόποις; Much, Every Way.* Be it first resumed, that They are Possessed: It is not more known that men have Harvested, Or plowne, or sowne, or their Garners been made ful and plenteous with all manner of store; but with equall certainty and evidence this advances it selfe in the face of the world, and he is scarce acquainted out of his owne Parish, nor in his own Parish in England, to whom this is not known by evidence certain and notorious. This then laid in to the former, I infer: What hath been said of possession, what can be more said of it, hath it not All force here? Doth it give right, right alone, full and natural right, the most natural, the Law looking on, approving and consenting, and shall it have no operation here? Shall the Churches case be singular, & the Ministers of Jesus Christ have no benefit of common axioms

xioms, no fruit of those are to all other fruitful operations? Shall they have no favour by that All have favour, no benefit by that All have benefit, the Having their Own in their own hands? and shall that helps others many ways, advantage them no way? Shall men look upon securing enriching Possession, shall wise men look upon it? Shall the quintessence of wisdome in most reverenced Laws, and those diffused all abroad have consideration of it? Nay, shall that little measure of knowledge imparted to tame Beasts, unable them to espy the good, and prompt them to observe the Law and order of it? And shall onely in one case the poor Servant of God, that excludes himself from all the world to wait on his Lord in the Temple, nor for his own sake, nor for his Masters sake partake of the common benefit of the Sun-beams as it were, that shine cheap to all others to their comfort and benefit? To keep him in that he has, to preserve him from injury and spoil, to secure his dear Owne, to render him but somuch regard from his fellow as one brute creature gives another, whith will not lightly snatch the prey ravenously out of his fellows mouth, yet more unreasonable men will! Will they? (and plot to undo those that dare but *mutire contra?*) take away, or keep away I say, from their Brother, Neighbour, fellow-Christian-subject, and Gods Minister his rightfull possession! without regret! without mercy! casting him out of the vineyard, and as good as slaying him! for to strip is next to starve, and that worse then to kill;) not dreading to act over again the mighty mans part against poor *Naboth*, who had but a little, yet he must not keep that; He that has nine for one already, must have his Tenth also to make elbowroom for his pleasure, or content, perhaps for his Riot and Sensuality. Can this look like good, Christian, or well-pleasing in the sight of God or man? Is any unrighteousnesse, and this not unrighteousnesse? Is any thing unequall, and this not unequall? Is any thing with impious rude and uncivil, and is not this of the worst sort of impiety joyned with incivility and barbarous cruelty! Every man claims his Property, Every one owns his Own, and shall not Ones? Must he alone be excepted? Every one has benefit by it, comfort from it, with expectation (well enough agree-

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greeing) of joy in the world to come ; Shall one sort onely be pent up to fast or feast himself with his spiritual apprehensions, comforting no higher then with the expectation of the world to come, denied his own bread here in a Land flowing with milk and honey , to all other the joy of all Lands ? If there be no due, I say nothing : If there be, I could say no less : *There is something of Justice due to Truth, and the seriousnesse of things sometimes calleth for sober & cheymency.* The Law is every ones birth-right : The Husbandmans, the Labourers , the Tradesmans, the Beggars : *Soli ex omnibus Clerico commune jus clauditur !* as spake S. (1) Ambrose upon like occasion, shall they alone that wait on the King of Heaven, have no benefit by Imperial Constitutions ! The tenderly regarded Church was wont , and even by judgement of the Law, to be compared to a (2) Pupil, (under age and subject to wrong) As much religious Charity or demonstration of true Christian piety to be helpful to her weakness, as to relieve a fatherless childe , wherein (3) S. James placeth the power of that Religion that is Pure : Are things so much changed ? No, they remain the same : Or, are wise mens pious thoughts so much altered, their Pure Religion corrupted, themselves set upon Pelf and Mammon , yea, spoil and wrong not declined for conscience sake, that they dare invade anothers, Religion instructs or permits them to take from Religion, strip this Orphan-Church , withdraw from her Ministers , force from their hands, and extort and wrench their very meat out of their mouths, I mean in their righfull dues, held back, grudged, or squeezed from them by fraud or force ? Must not Gods bright honour be darkned, if his Lights goe out ? Must they not goe out, if the oil be taken from the Lamp ? Can it bee there put without the Levites help ? and how can they attend to do it , if that which the Laws of God and man have settled upon them to live on, (in equality of strength for right with all other Tribes) be surreptitiously or violently taken or withheld from them (for He may starve me as well that gives me not my allowance of meat being appointed so to do , as he that takes it away from me,) and they have no benefit of Law, no not of that whereof all the world hath benefit, and by Law, *I may keep mine Own that*

(1) Ambros. li  
2. Epist. 12. tom.  
5. pa. 98.

(2) See before p. 61.  
& Briton Ecclesia fungitur vice minoris , meliorem potest facere conditionem suam, deteriorem nequam : fol. 143. cited by Cook Instir. 1. fol. 431. & vid. Bract. de acqui-  
rendo rerum do-  
minio: l. 2. c. 5.  
fext. 5. & c. 15. f. 1.  
In proximis in-  
fan. 12 propter utilitatem eorum  
benignior juris  
interpretatio-  
facta est. Inst. 1. 3.  
de iniustilibus &  
pulationibus sec-  
ted quod diximus.

(3) Pure Religion  
and undefiled be-  
fore God, u. 10  
visit the fatherless  
and widow, &c.  
chap. 1. ult.

I have in Possession. Heed every syllable of which proposition, striking in with the interest in common of every One man in this Nation; and if it be a very small thing now that Possession may not be stood upon by some, but they turned out of theirs, or it be questioned whether it may be withhelden, who knows how long it may be ere others — &c. But I forbear. I omninate no ill, I wish nothing but good, I pray they may enjoy their Own who grudge, or quarrell, or want but leave to withhold other mens; Only I fear that Circular Curse which hath (1) used to come about, which also I invert into a hearty prayer: Let not, O Lord, the Extortioner consume all that They have (2), Nor the stranger spoil their Labor. *Hoc avertat Deus. Mihi donum. Absit. Amen.*, Amen.

*Object.* But here comes a great Objection to be answereſ, How the Churches Person or Man, in the ſense before, can be ſaid to be possessed of these things, ſith they are known to be in another's, the Husbandman's poſſeſſion? He plows, and ſows, and looks to, and Has: Much good do it you, faſh he then, with your part ſith I have nine and the Tenth, As was jestingly put upon the Sophiſter, who when he had with much subtilitу of Syllogiſme proved two egges three, was bid take the third for his ſupper. *Ans.* Nay, not ſo neither: Here is more reality, a poſſeſſion (or quafi poſſeſſion) of these things, beyond fancy or ſpeculation: Not of the things indeed ſtrictly, but of the (3) Liberty and Right to take them up, and that is poſſeſſed continually, even when the things themſelves are not: As a Lord is poſſeſſed of a Quit-rent ſeven years together, and yet he receives it but once a yeare, his right is inherent when the power is not uſed: Or, as a man poſſeſſes a way over ſuch a ground, not by the Land it ſelf, but by the leave, he may when he will, and will when he liſts, and that liſt comes as often as there is occaſion, Thus to make uſe of the Land for his Service. For understanding which things the better, we muſt have recourse to a known diſtinction, even in Law, or a ſeparation or ſorting out poſſeſſions into two kindes, of Rights, and Things; Corporeal, and Incorporeall. The one (Corporeal) are poſſeſſed but by grapping, or clasping the Things, as in our hands, &c. The other

(1) *For it is  
Endeavour &  
Strugge, neceſſary:  
a demon-  
stration of Heavens  
I ſee, or a ſign or  
example of it thou-  
to do: — the  
Curſe, or curiu-  
ſation to the  
Aſſiders, or One  
for Another,  
2 Thess 1: 5.  
(2) Psal. 109. 10,*

(3) *Is qui auct: ore  
habet ad rem re-  
cuperandam. ip-  
ſam rem habe e  
videtur. E. de di-  
versi. regalis. L  
15.*

Incorporeall (the Rights) are enjoyed, even in the use, or having used, and so continually enjoyed, even when the use it self (the fruit) is not. As the Patron of an Advowson in gross, 1. Has never the Glebe, nor Church, nor Tythes, nor any thing seen: 2. Nor has (it may be) presented these 20 years past, or for these 20 years to come may not, yet still all this while he hath ever a Right to present, (if (1) ever he presented, or had right, which right is *Lieger dormant* with him continually, till he draw his power into act, as he does when is occasion, reaping some fruit of that right which was though seldom used, inherent continually: Even so the occasionall Receiver of Tythes, it may be once a year, or whensoever, has still *Ius ad rem*, that is, to the taking them up when they shall be, which is the fruit, Though not *Ius in re*, the continual actuall perception of them: In short he is possessed fully and clearly of a right to them all the year, but he reaps the fruit of this power only in the fruits of Harvest. Much is said of these things both among our Lawyers and the Civilians; But this may clear the thing, how the proprietary hath continuall possession of his right in the interception of use of his power, and yet always leave and power to use it when there is occasion. And this also may prevent another doubt wil arise anon about Prescription, which is always founded in possession and more, even a continuance, and how can this be in the interruption of taking up these dues but seldom and as is occasion? Yes: This may be well enough: for without Interruption, Ever, there is a perpetual right of taking them up when they shall arise: a continuance of claim though the things arise not to be claimed.

But it may be replied to both, These things are corporal, visible, *qua tangi possunt*, within reach of All the senses; And how throng we them up then into that notional airy speculation of a right in the clouds; Such Things should be Possessed actually, or they are not within the Claim of Possession. For a (2) Triplication to which reply, Yes; so they may

*Solut.*

(2) *The redouble  
upon that is given  
in answer to an an-*

*swer: a term familiar in Law. Ad replicationem vero sequitur triplicatio, & ad triplicationem quadruplicatio (one rejoyder farther) ex causa, &c. Bracton de Except. cap. 1. fol. 4. to 400. & vid. fol. 421. & fol. 424. Replicatio est, &c. & contra replicationem datur triplicatio Reo, & iterum quadruplicatio penitentis. Flex. lib. 6. cap. 36. folio. 10. pa. 424.*

indeed;

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indeed; The *Things* may be seen, but their Right is invisible: as a Church may be seen, the Glebe is tangible, but the Right of Advocation thereto is, what? Ask, who ever (1) had it in his hand, or can tell who saw it, or where it is. The (2) Emperour has fully satisfied this point; Let patience bear with a little more length then ordinary in transcription, because it tends to illighten all before: *Quadam præterea res corporales sunt, (saith he) quedam incorpores.* 1. *Corporales ha sunt quæ sive natura tangi possunt: veluti fundus, homo, vestis, armorum, &c.* 2. *Incorpores autem sunt, que tangi non possunt: qualia sunt ea quæ in jure consistunt: sicut hereditas, usus fructus, usus, & obligationes quoquo modo contracte.* Nec ad rem pertinet quod in hereditate res corporales continentur. Nam & fructus qui ex fundo percipiuntur corporales sunt, & id quod ex aliqua obligatione nobis debetur, plerunque corporale est; *veluti fundus, homo, pecunia.* Nam ipsum jus hereditatis, & ipsum jus utendi fruendi, & ipsum jus obligationis incorpore est. 3. *Eodem numero sunt iura prædiorum urbanorum, & rusticorum quæ etiam servitutes vocantur.* And the same is also the nature of this Right; Though the *Things* themselves admit possession as visible, tangible, yet the Title to them is in nubibus, a conceit, or supposition of the Law, without any sensible existence; And we may not argue from a *Thing* to a Title, from Land to an Inheritance; for they come under severall conceits of the minde, and must be cloathed with several expressions, and though they are about the same thing, yet they are not The Same thing, nor admit the same words and considerations. So that it remains then, Tythes may be truly possessed, even when they are not, that is, A right to them against they are or shall be; That *quasi possessio* is enough to go along with the measure of time in even paces to be a ground of Prescription by that continuance; and though the things themselves may be seen and possessed Corporally, yet the Right cannot, nor is expected should. Be sure of this; That if the Lord of a Mannour, or that higher of an Honour, a Patron of his Advocation, or Copy or Free-holder have right or possession of any thing they have, the Corporation of Publick Sacred Ministers

(1) *Quamvis Ecclesia secundum quod constatur lignis & lapidis- bus, sic res corpo- ralis, sicut tamen præsentandi erit incorpore. Brat. fo 53.*  
(2) *Instit. lib. 2. tit. 2. de iebus corporalibus & incorporealibus.*

nisters has as certainly possession present and continuall of Tythes in the severall Trustees or Persons, of or for that Corporation, which stand forth to Act for it, being a thing otherwise onely in *Nubibus* and consideration of the Law; That Right is vested in Them while they live; When they die the Law has provided them of a Chain of never failing successours to supply their mortality; Thus it *has been*, Thus it *is*, Thus it *may be* if Justice may be suffered to have its course, and innocent forms of Justice not disturbed by parcimony and improvident troublesome folly; and Thus is Religion, and with us the Rule thereof, the Bible provided for and possessed of (in its publick Ministers) sufficient, outward, visible support to the end of the world. O Christian, if thou be, Think of this one word; What it is to *Wrong the Righteous, to dispossess innocent poor Naboth of the inheritance of his Ancestors, to thrust any Poor man out of his Own, or get or Wish any helpless just man out of his Due and lawfull Possession!* If thou be such, think of this, O Christian!

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T follows, and is fitly joyned to the former, In whose name this Possession is, which may bring it about that in a strict sense indeed no Man was or is or can be thought to be immediately in possession of these Rights but God himselfe, and that in the words and thoughts of the Law: (for, I give not mine owne, but onely as the Priest heretofore delivered forth the minde of his Oracle:) For, (1) *Is Possidet cuius nomine Possideretur*, says the same Oracle again, It is not so much *He that is In*, as *He in whose right he is in*, is strictly the Possessour: As in a Tutor compared with his Pupil, or a Servant with his Master, &c. And this

(1) Flora lib. 4.  
cap. 2. sec. 1.  
Bracton de Affi-  
sa nov. disc. fin.  
cap. 7. sec. 4. fol.  
165.

this then fitly advances us onward to the additional strength this Pillar of the Support of This Civil Right has by *Another's interressing*, That he that takes them up is never estated in them in his Own Right, but the true and farther uttermost Possession of them is vested and seated elsewhere, terminated Higher, above in Heaven. Men are Takers up of Gods Dues, They doe receive what (withdrawing his visible presence) is His Right, (who should sure be least despoiled or defrauded,) and Persons they are in the lense before, as to stand forth and act for a Supposed Corporation, So Having another Personality to hold forth, in being His receivers, (who though he be everywhere is yet to us Invisible,) To take up to His honour what is Devoted to His service, who is the Sovereign Lord believed of All things, JEHOVAH God Almighty.

This is much believed in the world, and has very much affirmance even in our Civil laws, nor can it (if the thing be thus) but much strengthen and settle this pillar of property, whereupon as great security as Any must Needs rest for enjoyment and Continuance, that *Men shall not be put out for Gods sake*, nor from His right They be disturbed, Who receive not from or for themselves, but as *His Deputy Possessors and Receivers*; Vicars all by a substitution from the Highest, in whose Right taking up what they doe, they are the more bound to dispense in His service to His honour; And who is he will be so bold to turn the *Lords Steward* out of doors, if not for his own, for his Masters sake, or dispossess God and Religion, subtract or withhold any thing from the *Eternall Majesty*? Heaven, 'tis said and believed, intereses it self in this case, the Powers above have laid their Sacred hands upon these bequests and receipts; What is so settled by clear Human Law below, has a bond of Religion to tie it on faster upon *Whoever are the (1) Usurpators*; The spoil wherof must needs be Then not that of *Wrong* but *Worse*, not of Robbery but *Sacrilege*, a Divine Theft, the Robbery of Heaven, like the *Giant's offence*, and of that Kinde the *Eagle* heretofore committed for love of her young, Not sparing to take the smoaking flesh from the Altar, wherewith the Gods should have been propitiated, But there hung thereto

(1) See Sir Henr  
Spelman of  
Tythes, p 139.

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a fatal Coal that set all on fire, and burnt both her nest, her self, and young ones. A fearfull consideration ! (if i shoule be so, for still I argue upon supposition, deliver ing forth the tendries of another, my Oracle must bear me out) enough to awaken the deadest, and startle the wisest, to amaze the bold est, and affright all sober, and any ways considerate, and ad vised men, from laying violent and profane hands upon that God had touched before, or tugging it out by strength in this Case, least they be not onely like that deplorable sort, *Against whom God hath a Controversie, Hosea 4.4.* This People u, (Let them alone,) as they that strive with the Priest; but worse, *Shall the Clay exalt it self against the Potter ? Woe to him, Esay 45.9.* that striveth with his Maker. Into whose divine hands the Donations made and following Rati bitions favour, in expression, intent of delivery ; That what to Religion, was rather Devoted, then Given ; even to Gods Great Majesty, the Donee, Receiver, and intended Detainer, and Disposer, That so men might not but give forth to his Will what they receive by his Deputation, being like to be thereby the better Stewards of those Manifold Gifts of God which they receive upon his account, in his Name, and from his Right, and upon a second consideration should be the more precise in dispensing onely to his honour, what for a second reason the hand of his providence dispensest unto them to have so dispensed : and yet farther the reason of whose proceedings and Justice may seem in equity to expect that they should not spend merely upon themselves, but use *Non quasi suis sed quasi commendatis,* what they receive of his bounty, as His, to be so, and no otherwise but so used.

But to come to the strength of some Particulars ; (not dealing onely with the supple and pliable affections to mould and frame them, but stablishing the judgement in the thing averred or supposed ; ) That things devoted to Religion are not solely and ultimately Mans, but in a further hand ; I will not urge the sayings of Poets, and Oratours, Councils, School men, and Fathers, though these offer themselves ; but the glances of Scripture may be not inconsiderable, at least to prove the possibility and elsewhere existence of the thing ; to which

which purpose I awake to remembrance: first, the vow of Jacob, (1) *Quicquid dederis mihi, ejus Decimam omnino sum daturus Tibi.* Whatsoever thou shalt give out to Me, the Tenth I will give back to Thee: which promise he makes to his God. And of Lands, Vows, Oblations, &c. 'Tis said, (2) *Every devoted thing is Holy to the Lord:* particularly (2) *Lev.27.28.* (3) these Tythes, whither of the seed of the land, or fruit of the Trees, 'as we would say, Corn, and Fruit) And accordingly paid in practise, not without intimation of this Consecration and appropriation; (4) They of Judah and Isræ- (4) *2Chron.31.6.*  
el brought in, *Decimas armenti & gregis, Decimas sacras, id est, sacras as Jehovæ Deo ipsorum,* as Tremellius; Their Tythes of the flock and of the herd, sacred and devoted to Jehovah their God. Who complained He was defrauded, even he himself, in These? (5) *Will a man rob his God?* (possibly the thing may be done, or else here in vain questioned:) Yet you have robbed Me: Wherein? In these. Ye are cursed with a curse, &c. And for the Attournment or making them over to Man to be received by him, for his good Lord and Masters behoof, (6) *Behold, I have given the Children of Levi all the Tenth in Israel,* (They were mine, but I have Given them to Them) *avn̄ τον λειτεργεῖον ὅπερ ἀντὶ λειτεργῆς,* for their publick work of Ministrion, For the service they serve in the Tabernacle of the Congregation. All this is in Gods Book to prove the possibility of the thing (and abundance more not found or sought:) But now for what apprehensions Our Laws had of this thing here, which is to the point indeed, The beginning of the great Charter was remembred before; (7) *Concessimus Deo, & hac presenti Charta confirmavimus,* (7) *Chap.1.*  
We have given to God for us and our heirs, that the Church shall have All her Rights and Immunitiess. And a part of the Church Rights were then in Tythes, and Jurisdiction to Command them: (Whereas the Liberties of the Freemen of the Realm were given to Themselves as 'twere into their own hands immediately.) Were those blinde days? Was King Edward blinde also? (1) *De omni annona decima garba Deo debita est,* & ideo reddenda, said he, The Tenth due to (8) *Leg. Edovar. cap.8.*

God and so to be paid: so preached *Augustine*, and was granted by the King, his Baronage, and People. Not *Augustine of Hippo*, but one was more near us, and more to be heeded by us, though

(1) *Nostri quia Dei sunt cuncta que percipis, &c.*  
*suche word were alleadged before, p 74. And a little after, Quid si dicter Deus, Meus est homo quem feci, Mea est terra quam colis, Mea sum & semina que s. argis. Mea animalia que fatigas, Mei sunt imbutes & pluviae, & ventorum flaminis mea sunt. Meus est S. lis calor, & cum omnia Mea sint elementa vivendi, Tu qui n. annus accommodas, solam decimam merebaris. Sed quia pię nos pacit omnipotens Deus, amplissimam tribuit mihi laboranti mercedem, sibi tantum decimam vendicat, nobis omnia condonavit. Ingrate f. au'tor ac per fidem, divina te voce conuenio. Ecce annus jam finitus est, sedde Domino pluenti mercedem, &c. In a baroſſ ſerm. de temp. 219. Tom 10. p 370.*

(2) *Spelm Concil p 360.*

(3) *Id. p 377.*

(4) *Id. p 349.*

(5) *Id. p. 517. c. 10.*

(6) *Id. p 544.*

(1) that Father spake fully enough and to this point, to his *Africans*; but I keep my promise and home: Wise, prudent, valiant, successfull, and exceeding pious, King *Alfred* required, (2) Thine Tything portion give thou to God: and (3) in his League with the Danes calls them, *Dei Rectitudines*: and his father before him wrote his *Catholick Donation* (4) at the Altar, offered it there, as to whom? and not having to do with an Earl or Earderman, or any upon earth Man-receiver. The Council at (5) *Enham* called them, *Jura Deo debita*; King *Knout* in his (6) Laws, *Quod annis quisque Deo debita Jura iustas-*

(7) *Id. p. 531.*

*que redditiones rite persolvito*, Let every one pay yearly to God his due Rights: and King (7) *Ethelred* before, *Nemo auferat Deo quod ad Denm pertinet*, & *prædecessores nostri concesserunt*, Let no man take from God what belongs to God, and which our Ancestours gave. What was in King *Edwards* Law we had but now: which how much the Common Law remember also, and the following confirmations of that Law (as many as were) involving this also: and to omit what might be gathered from our Provincials in *Lindwood*, and the Decrees at large, step at once to *Henry 8.* where (8) the Parliament complains to the King for remedy, that, Numbers of ill-disposed persons having no respect of their Duty to Almighty God, but against Right and good Conscience, did with-hold their Tythes, *Due to God and holy Church, &c.* They were then reputed and in Parliament Language so to belong: and lastly in the commonly reputed common Law, *Braft and Fleta* are not wanting. No one can but account, these things

(8) 27 Id. 8. c. 20.

things, and even in their account a part of the sacred Revenue, and then (1) sayes *Fleta*: *Extra pa-*

*trimenti sunt Res sacre, &c. beyond mans Right or reach: neither are they to be transposed for that reason: for (2) no man has them, they are a part of Gods Inventory, sayes *Bracton*. They (3) and the Glebe are questionless as to this all of a nature: their property, use, possession, intention, devotion, application, and jurisdiction the same: and for what Land is given, (4) *Videtur & verum est, quod primò & principaliter sit Donatio Ecclesie, & secundario Rectoribus & personis*, says the same *Bracton*. Which if it be excepted against as thrown in with the exploded Abby posseitions, else where is shewed some difference. It is in Case of Remedy for recovery of Cathedral, Conuentual, and Parochial Church-lands, by a Writ of *juris utrum*, whether an Assize shall lay of the latter as of the two former? and it is (5) said, it shall not; For though those Lands were given to them *In liberam eleemosynam*, yet they were given to Persons, as well as Churches, who in that regard having leave of remedy, As Other men had, there (6) needed be no stepping aside out of the way upon no occasion; and the form of the gift may be known*

by the Charter; but now for him that has Right by his Parish Church, it was not so, that any thing was settled upon his person, but onely upon his Corporation, *Et que persona nihil clamare poterit nisi nomine Ecclesiae sua, quia in Ecclesiis Parochialibus non sit donatio personae sed Ecclesie, secundum quod perpendi poterit per modum donationis*. This is evident, for what Land is given to a Parish Church; the reason is the same of Tythes, as devoted to beyond this World, and

(1) sacred

(1) Lib. 3. cap. 1. Sect 3. *Res verò sacra, religiose, & sancte in nullius bonis sunt. Quod enim d' vim Iuris est, id in nullius hominis boni est, immo in bonis Dei hominum centuria. Bracton lib. 1. cap. 12. et. 8. f. 8. vid. st. de rerum divisione, l. c. Sect. 2. Inst. 1. 2. tit. 1. Sect. nullius. Sacra res sunt quæ ritè per Pontifices Deo consecrata sunt veluti ædes facetas, & Donatia, quæ nè ad Ministerium Dei dicitur aut. Quæ etiam per nos stram constitutionem alienari & obligari prohibuiimus, excepta causa redemptio's captivorum. 16 Sect. seqn.*

(2) Item donari non posse res quæ possident non possunt, sicut res sacrae v. religiosæ, vel quasi, &c. Hujusmodi vero res sic & a nullo dari possunt, nec possunt eri, quia in nullius bonis sunt, id est, in bonis aliquis pertinet singularis, sed tantum in bonis Dei vel bonis facti. Bract lib. 2. cap. 5. Sect. 7. f. 14.

(3) *A Rector or Parsonage is a Spiritual Living, composed of Land, Tythe, and other Oblations of the People, separare or dedicate unto God in any Congregation for the service of his Church, and for the maintenance of the Governor or Minister thereof, &c. So three & half integral parts, sc. Glebe, Tythe, &c. Spelman. de non temerand. Ecc. Sect. 1.*

(4) *Bracton lib. 2. cap. 15. Sect. 4. f. 78. & Fleta. l. 2. c. 16. Sect. 13. p. 205.*

(5) *Bracton in tract. de Assisa utrum ca. a. Sect. 8. f. 2. 6.*

(6) *Quod alicui gratos conceditur, trahi non debeat in exemplum. Reg. Iust. Cap. 74.*

(1) Sir H. Spelman of *Tyber*, chap 17. That  
things offered to God be holy.  
I must first explain what I mean by Holy, & that  
is, not that they are divine things, or like those of  
the Sanitary, which none might touch save the  
anointed Priests: But like the Lands, and Possessions  
of the Levites mentioned in Lev. 27. v. 28. 29  
that were said to be holy and separata from com-  
mon use, and separata from man, has it, from the  
injury of Secular persons, and to be easily dispor-  
ted to and for the service of God, Defensum &  
minutum ab injuria hominum. sc. de rerum  
civili. L. Sanctum, as the persons of Emperors  
and Kings are said to be sacred. For as the Altar  
sanctifieth the Offering, Matth. 23. 19. So  
those things being offered to God, are by this very  
act of Oblation made holy, and taken so into hu-  
om tuition, as they may not be after divorced.  
P. 82.

(2) Aristot. Polit. I. 6. c. 8.

(1) sacred, in the same sense that any  
thing viable is, as separate and laid in se-  
veral from the touch of prophane hands,  
and common vulgar uses, designed and set  
aside for God and godliness, (οντα τακτη-  
ως τις θεος, as is (2) Aristotle's very fit  
and apt expression,) only for Heaven.  
Not for nature or sin, necessity or sensu-  
lity, in the serving of which ends most  
other things spend themselves, but merely  
to set forth Gods honour in this World,  
as the Ox or the Lamb brought to the Ta-  
bernacle or Temple, or as he referred many  
things to himself in the Levitical Law,

but the Levites were his Receivers. He was no more visible  
Then then Now, nor the things invisible and of a different  
nature, yet to his honour, yea to himself were appointed  
then, (and he did appoint them) sundry things to be set aside,  
which his Levites had and he in them. So here. As in implica-  
tion of some like thing whereto believed and received here,  
it was spread abroad, and yet remains at the sea coasts, that  
those followers of Peter and the other Apostles who main-  
tain their temporal life by the painful labour of Fishing, bring  
the Tenth of their personal gains and lay it down at the pub-  
lick Minister of sacred things his feet by the name (which  
they yet retain) of Christ's share. Why this, but because they  
intend Him a part of every Draught? As if never a day or  
night they lay forth with any succels but somewhat must be  
laid aside for Heaven, and of their penury some mites be con-  
tinually paid in to his Treasury. How? To give them into his  
Own hands? This is impossible: He is in Heaven beyond the  
thick clouds, where we nor can offer, nor he receive any thing:  
But he has Servants, and Service, and Ministry, and Minis-  
ters, upon earth, to whom he hath said, *He that receiveth  
you receiveth me*, into what place soever ye enter Take what  
ye finde, for the Labourer is worthy of his hire; For them  
therefore and their sakes, (3) in His Right these things are  
Types, and of which Himself hath no where in his word declared any reservation, Raynolds. p. 110. 4 p. 474, 175

(3) In as much as  
all the Types of  
Christ, as a Priest,  
have received thyself  
as due, & as types;  
and in as much as  
his person and office  
are eternal, and  
therefore the an-  
nexa; and in as  
much as he hath no  
wives dispensed  
with, or denied,  
or refused, &c. and  
lastly, in as much as  
he hath left those  
are his Ambassa-  
dours, in his stead:  
for my part I do  
not see why unto  
them in the Name  
and Right of their  
Master, those rights  
should not be due,  
which were man-  
safely his in his  
Types, and of which Himself hath no where in his word declared any reservation, Raynolds. p. 110. 4 p. 474, 175

issued

issued forth and brought in, and accordingly they receive name. If the world were asleep at first when the title was given and prevailed, It hath been awaked at some time since; 'Tis hard to impose on the vulgar, or plant any name or title among them that shall with success spread and grow, unless it fit in with their preconceived notions and apprehensions: It seems this did, whence they entertained it generally and retain it firmly, and by this name they yet express their own mindes of what they give, calling it *Christ's share*. Upon which account of somewhat beyond meerly Human, and that had a touch of Divine or toward Heavenly, These rights became triable, and the doubts of them onely disputable and determinable in that Court, by rule and practise, where few of earthly or meer worldly things were once thought of, and whose natural and first proper essential bound of Jurisdiction was, *Spiritualia & Spiritualibus annexa*. There were inquired into things above this world, and which could not be regulated by common rules of Civil Justice, as Articles of Religion, Exercise of Discipline, Ecclesiastical Censures, and generally things being or reputed Sacred: And *Thither Also*, as being of kinde and kin, did *These things* throng in, or rather were both admitted and invited, as saying by Doing what was, and that they were not reputed meerly of humane consideration, because they were let in and there had regard and only proper tractation or trial where things Divine and most nearly belonging to God had or should have had their due inquiries. If the aim had been only to get in *Dues*, (these Dues,) to determine of Civil property, or to keep one man alive in a Parish, All Civil Courts of Justice were open where All such things had their proper inquiries and resolutions, and the Tenth part needed not to have been separate from the Nine: But it seems somewhat farther was aimed at, and meant or implied which was the cause why these things were parted, and the face of things seems to represent that there was an apprehension and supposition that it was, because they were thought to draw near the things of God, and were, as far as any, toward *Beyond this World*, and Therefore they were sorted with a scene accordingly, and had their trial and discussion.

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cussion where the things of Religion and Christianity were inquirable onely, sc. in the Court-Christian.

Farther, by onely which kinde of Supposition the crime can be aggravated of taking them away to that heighth it commonly is, and men for purloining be accounted in the number of more then unjust, *Impious* and *Sacrilegious*. For it seems at least unto me that it is not so much the violation of any Command or Law humane or Divine, from earth or above heaven if it were possible, can denominate and specific this sin, (if that Law were as plain as another Divine Command, *Thou shalt not commit Adultery, Thou shalt not Steal;*) But something else and growing in the Nature of the sinne below that must advance the crime so high as to change kinde and become of Wrong and Injustice, Impiety and Sacrilege: To rob Heaven must offer violation to Heaven, and that be more then to offend in transgressing a Law of Heaven. For the Morall Commandements above come thence and are in force for us, and yct No one says Adultery or Theft are Sacrileges: Sins they are, but that their full latitude, the Divine Precept does not new specific the nature of the offence, . These or Any. So heretofore, when *In divinum* undoubted had bounded every ones own, The tribes ar least if not the families were parted by sure and immediate

(1) Qui rapit pecuniam proximi sui, iniuriam operatur: qui auctem pecuniam, vel Res Ecclesiæ abstulerit, Sacilegium facit. Cau. 17. qn. 4. c. 8.

(2) Porro à sacris fures Eorum, vel violatores propriæ sacrilegi di. Gi. Pet. Gregor. Tholos. Syntas. gom. lib. 33 cap. 14. sect. 8.

(3) ὁ Κτελευστὴ τὸ τέλον, ἵερον, ἵερον τὸ τέλον, Rom. 2. 22.

(4) Zouch. descript. Ier. Eccles. par. 2. sect. 8. Pet. Gregor. 1. Tholos. ubi supra.

like

like to see clearest in this case. And accordingly the (1) Civilian defined it, *Sacrilegium est furtum Rei aut pecunie Sacra ex loco, vel religiosa ex religioso:* and they are Sacrilegious, who? (2) *Qui publica Sacra compilaverunt*, that have medled with somewhat Sacred: still relating to the Thing from the Command; And the word also imports that way; for (3) *Sublegere* is *Furari*, says *Servius*, *unde & Sacrilegus dicitur qui Sacra legit, id est, furatur, so Another.* Still dwelling below and conversant about *That Is, Not Who says:* as we do not read that *Ananias* and *Sapphira* had any order at all to bring, or sinned against any Prohibition in revoking, and yet (with *Achan*) they usually march, (transgressing in what had come under divine precept no way,) in the head of the Sacrilegious. We have no strict Command for a Chalice or diverse other Utensils of the Church, nor the Church it self, yet few I believe will allow but transgressions aggravated by being conversant about *these* Things are worse than others, and of (4) extraordinary Guilt in this world, and they are Things. I promised not to meddle with any Theological Discourse, Nor do I here, but as it has dependance of and derivation from, yea, necessary complication with what was Civil. Our such Laws say, That Tythes are Given to God, which I say does well infer, their surreption sacrilege, as on the contrary, they that say, 'tis sacrilege to take them, give argument, they think they belong to God, Forasmuch as not so much Gods Command or Divine Right for dueness makes this sin, as something in, below, with the Act it self, and indeed Correlatively they infer or remove one another: for if a thing be bequeathed to Gods hand, (as the Law says plainly here,) it cannot but be sacrilege, *Sacra legere*, to take them (*Holy*) from him; as on the contrary if it be sacrilege to take them, They that say so must first imply and suppose they were made over and given to God.

I have in the prosecution of this point omitted what Epithites or Paraphrasing Descriptions I finde of them given abroad, where they are styled *Res Dominica*, *Dominica substantia*, *Patrimonium Christi*, *Dos sponsa Christi*, *Deicensus*, and the like, all which must needs advance them high,

(1) Cujacius in  
parat. ad legem  
Iul. peculatorum.

(2) Titeod. L.9.  
lect. 1.

(3) Apud Ioan.  
Calvin. Lexie.  
Iur. pa. 824.

(4) Locus fact  
ut idem vel fur  
tum, vel Sacrile  
gium sit, & capi  
te suendum.  
Claudianus. ll.  
42. Digest. tit. 19.  
L. 16. lect. 4.

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and joyn them near in with better then meer worldly things :

(1) Cap. 16. qu. 7  
ca. 1.

*In usum pietatis concessa*, as is properly said in the (1) Canon, Or, *Decimus Deo dari omnino non negligatur, quia Deus sibi dari constituit, quia timendum est, ut quisquis Deus debitum suum abstrahit, ne forte Deus per peccatum suum auferat ei necessaria sua*, as in the (2) Council of Mentz: But these are without the Circle of our Own, to which I promised to confine my self. Much less may I take scope to look abroad into the profane world, for their Oblations, even of *Tythes*, and to God, to whom they vowed and thought they payed. As *Agis* in Xenophon, and *Agesilau*s in the same, who both brought their Tythe to *Delphos* to their god, and offered it him; which (3) *Baronius* having remembred, and many more, concludes with, *At vero non immorabor dominis in singulis exemplis recensendis: Constat quidem apud omnes fere gentes, velut quodam jure natura exigente, decimam Numini devotas ac redditus: upon his credit, paid allover the world, and as due to God, not to maintain a man or any sort of men, but in signum universalis dominii, in thankful gratitude to the Original Donour of All, of whom they did conceive to have and hold their good Lease, and in acknowledgement of the tenure they brought him back again something.* *Fain*(as M. Hooker (4) gravely resolves and concludes, and with him I conclude this point also,) *would we teach our selves to believe, that for worldly goods it sufficeth honestly and frugally to use them to our own benefit, without detriment and hurt of others; or if we go a degree farther, and perhaps convert some small contemptible portion thereof to charitable use, the whole duty which herein we owe unto God is fully satisfied.* But forasmuch as we cannot rightly honour God, unless both our souls and bodies be employed sometimes meerly in his service; Again, sith we know that Religion requireth at our hands the taking away of so great a part of the time of our lives quite and clean from our own busines, and the bestowing of the same in his; Suppose we that nothing of our wealth and substance is immediatly due to God, but *All our own to bestow and spent as our selves think meet*? Are not our riches as well his, as the days of our lives are his?

(2) Cited by M.  
Selden Hilt ca. 6.  
seq. 6.

(3) Agis Delphos  
profectus est ac  
decimam Deo  
obulit. Xenoph.  
ac rursum: Ho-  
stium vero ita  
fructus agri est,  
ut duobus anni  
centum talenta  
& amplius Deo  
apud Delphos  
decimam dedica-  
ret. Id vid. Bas-  
ton. ad an. Chris-  
ti. 57 seq. 74.  
tom. 1. col. 607.  
(4) Eccles. Polit.  
lib 5 seq. 79 pa.  
424.

Where-

Wherefore, unlesse with part we acknowledge his suprem  
dominion, by whose benevolence we have the whole, how give  
we Honour to whom Honour belongeth, or how hath God the  
things that are Gods?

Thus far that grave and judicious man; a piece from  
whose page does more then a little adorn Ours: And so now  
we have seen how Tythes have been intended to be settled on  
Heaven: How our Laws say, They were so: How they have  
been tryed accordingly, and this alone renders their spoliati-  
on, sacrilege; Besides what else abroad to this purpose:  
*Sure then the world has looked upon them as Such: Sure they  
have been reputed at least as God's.*

It remains for application, How fast and safe they should  
then be from injury and spoil, How inviolably not to bee  
subtracted or touched, as things laid up in Heaven, as what  
may-not be purloined from the foot-stool of Gods Throne,(if  
there they have been deposited;) And Who is he dares put  
his hand toward that God has touched before, or lay a fin-  
ger upon that he has laid his hand, and would, (to see him-  
self deprived and wronged, or that the wrong should but  
redound to him, or touch toward him,) shew himself no  
doubt an *Angry Jealous God!* Sure, This must not a little  
confirm humane Right when a bond of Religion (or as Re-  
ligious) shall adde what strength it can to that which hu-  
mane wisdome by the best contrivance of all its devices had  
made and settled before for immoveable;and this we find not  
in some scattered loose sheets, but the universall, all-ruling,  
all-giving Law making faith for it;after the stablishing by Civil  
fancion, This coming in and saying, *These things were given  
to God, I know it, I should know and do assure it: Take my  
word for it, I have best looked upon them, and never took them  
for any other.* We know, for natural and equitable reasons as  
well as Law, No one should be put out of his own: Posse-  
sion bears such a sway that it secures multitudes in their *Hea-  
then right*, nor are they touched or questioned but from most  
known injury: And shall not Gods Minister sit as safe and  
fast, and faster in that not onely the Law gives him as His,  
but the same Law tells him and all the world he is in posses-  
sion

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on off for the God of all the World ? for the King of Heaven ? Ye cannot wrong me, but ye must Rob Him, defraud Religion, disturb an higher title, impoverish the Ministry, disable Gods service, starve and choak, ( by diverting those warm showers of bounty had wont to cherish and feed it) the publick practise of Religion at the root, leaving onely a possibility, but never reducible into act, of glorious service, by this that *Ananias and Sapphira have taken what Others gave, to maintain the Ministers of that service :* Do we account it so hainous a thing, (as Justly we do) to remove the old Land-mark, to curtoll the set rule of Right, or to deprive the good people of the Land of their part in the Great Charter, which as but to a lower hand neither was never delivered farther then their Own Custody : (Item, *We have given for us and our heirs to all the Free-men of the Realm these Liberties following :*) And shall it not strike higher that reacheth to the injury of Heaven, touching the *Imprimis concessimus Deo*, that the Church shall have her Rights? Reaching as it were unto another world, conveighing up to Heaven, and depositing as it were at the foot-stool of his Throne the Assurance, making Him the entrulled Feoffee for others use, or rather the absolute and irrevocable Donee, and Proprietour estated and indowed to have Right or Wrong by the men of this world ? I will not say the thing is so, fully ; I onely propose, what the Law seems to intend ; with what an eye that hath looked upon it, or under what form it hath represented it; me thinks in terrible form enough of Conscience to all that believe a Deity, to fright any from meddling that considers, (if it Should be so,) *Decima DEO debita, Dei Rectitudines, Deo debita Tura, In usum pietatis concessa, & Concessimus Deo pro nobis & heredibus nostris, &c.* If this should NOT be so ? Some one may say. But say I, What if it should? THESE may be but the workings of fearfull fancies ? But, What, say I, if they be Reall and Solid Truths ? They do but terrifie : But what if they should and ought instruct ? As the (1) barefoot Friar heretofore answered the Gallant, who scoffing at his austerity, asked, Why so ? This is not much, quoth the Friar, to him that thinks there is Hell.

Hell. But if there be no Hell replied the Gallant, what a Fool art thou then? But, if there Be, said the other, Who is then the greater Fool? What if thy sinfull soul be sealed up to uysbelief, and thy seared conscience will not render thee dreading the Fire till thou feel it, till thou lye down in it, till thine own experience be the first credible Preacher thou wilt believe, when thou shalt finde thyself laying down in flames, where the worm dieth not, and the fire NEVER goeth out? Doubtless it is best to cast the Worst; most safe to forecast what May be although it may Not be; the more if it may tend to danger in the worst, and those everlasting inconveniences and if men be not given over to a reprobate sense, past feeling, as the Scripture speaks, lulled asleep by the deceitfulness of sin into a dead Lethargy, the god of this world having so blinded their eyes, that they have no regard of the next. It cannot be but these considerations must breed a pawse at the least, and with all sober and advised men a deliberation and Doubt whether these things be so, or no? Whose possibilities are assured by the instances of Scripture where they were So: Which men have agreed so all abroad to deliver from the publick voice as it were of the Church and of the world: Which are left inshrin'd in the sacred monuments of most reverenced and solemn Laws, and unless most things did agree to deceive us, could not but be True. And if so, that there be Possession, yea, sacred, and in the sense given Divine Possession, both Equity and Law, Godliness and Honesty, Religion and Reason, Piety and Justice call out for Every man to have his due, (especially where a party may be more then man) and it can be no less then Unrighteousness and Impiety both together to dispossess and deprive of them. We are bound to love our Neighbour as our selves: How do we this, if we wrong him? If we undo him? If we give him cause of grief? Which of us could be contented to be thrust out of our own possessions or inheritances? a part, much worse from the whole? and yet much worse then that if the whole labouring Tribe should be left to uncertainty, and Churches in danger of being vacant? We should love God above All: How shew we this in wronging His Ministers, taking,

Rom. 1. 28.  
Ephes. 4. 19.

<sup>a</sup> Cor. 4. 4.

king oile from their His Lamp, and venturing to lay a covetous finger where He is said before to have laid his hand? The prosperity of Religion is, or should be to every good man the *joy of his heart, the light of his eyes, the comfort of his soul, the life of his life*: how further we this, when we take, (not onely from man, but) from that Religion we pretend to honour, depriving the labourer of his hire for work therein, muzzling That Ox treading out the (1) Corn that he is not able to do his work, and whereas *the offering of the righteous maketh the Altar fat*, we make it lean (by taking away the fat that others gave,) and are resolved once more to tempt the Providence of Heaven, whether it bewake and regard to revenge its own wrong? whether the Gold of *Tholouse* shall prosper in our hands, though it were once spread upon the Altar? or the sacrifice will carry again a fatall coal, which kindled by Heaven, may not have power to be quenched on Earth?

Will a man rob his God? Will he? His own God? Any? saith the Prophet: and will we be instances in ours? Dare we contend with Him that is Great? *are we mightier than He?* Are Gods and Mans rights combined both together? and will not this double strength hold? a double fence protect from violation? *Seneca's Epistles* would sure teach us more honesty, and the Law of the (2) twelve Tables fright us into better Religion. *The Relation To A Deity* is me thinks such a charme as should not but affright any from meddling where it is inscribed, or entring that circle where the dimmest Characters thereof do circumscribed appear: Sure he that put in some respect into his (3) Law, *To God As God*, and would have *None violated*, would least of all excuse us if we should profane (*Himself, Our Own.*)

(1) 1 Corin 9.9.  
1 Timoth. 5. 18.  
or, treading the  
mowes: So Ioseph  
has left us that  
law interpreted,  
with much proba-  
bility. Vid. Iosep.  
Antiq. 1.4 cap. 8.  
εγενούσας διεγενερώντας. Thou  
shalt not muzzle  
the Treading Oxen.  
Deut. 23. 4. the  
place the Apostle  
allegedgeth, as Esai.  
4.2. αἴδοντος  
εγν. Thou shalt  
trample the Moun-  
tains.

(2) Sacrum Sa-  
crae comen-  
datum qui demp-  
serit rapiscere,  
particida estio.  
L. 12. tabul.

(3) Θεος εγενε-  
ρωντος. So  
the Septuagint  
reads the Text,  
Exod. 23. 28 in-  
terpreted by Ioseph  
of Iordan  
Gods: Antiq.  
lib. 4. cap. 8. &  
contra Apion. II.  
2. near the end.  
And also by Philo  
the Jew. lib. 1. de  
Monarch.

## C H A P. XXXII.

**L**N Whose right Man hath been *Long* possessed too: through the continuance of ages and generations: for this is no device of yesterday, like to change to morrow, but such as has already out-lived peace and war, troubles and conquests; yea, the revolutions of all seasons, of winter and summer, health and sickness, corruption and reformation; Nor from the darkest remoteness of any Christian days, does shew of any other maintenace appeare for Gods family but this, which hath bin the subsistence of his workmen all along that have laboured in his harvest, and bin maintained hereby, without which they could not have subsisted nor have laboured. As if Providence had intended by this solitary instance to furnish us with one very good argument for Expedience of continuance, Because the world could yet give example of No other, At least some cause of doubt there Might be and Reason to fear whether Any other would do so well, because none at all had yet been tryed. For many things smile with very much content and pleasing flattering delight upon the nimble working fancies of busie bold undertakers, Who when they have cast and contrived such a thing should be; give themselves leave to be perswaded presently it shall, and what hath been moulded in their working fancies (commonly attended with weak Judgements) may easily be made out into Existenter Realities, for which their quick wits are soon able to afford them arguments enough: But when they shall come to reduce their speculations to practise, and give life to their pregnant and very Happy conceptions (as they think) setting the whole frame of their new and unexperienced devices to move forward upon all those necessary wheeles their fancies had soon made, and now must be made out to keep their Projects a going, Many a doubt starts out *ex improvviso*, Many a rub is cast in the way of their smoothest

smoothest and evennest most probable designes, Many an incongruity arises to disturb and cross their promising and most handfomly and universally complying expectations; Many a fowre and unlooked for opposition to make the plot rellish of Humane, whatsoever hath been the best fruit of Mans contrivance, accompanied as it is with manifold Humane infirmities: Whence some wise men have declined nothing more then Change, accounting it a good part of their best Wisdome to Vary as little as may be in things of waight, yea to let things quietly and upon deliberation alone with Some inconveniences if but Tolerably Well, not onely because of the Charge and trouble, but also that manifold Uncertainty will always follow Change, (as we are able to make it,) taking that *Is*, though precisely and purged from all inconveniences None of the best, and venturing with choice and most satisfaction of reasonable desire along in the trodden, though somewhat uneven path, because There they can descry the feet of Sundry Passengers that have Used to goe before them. Experience is among the greatest Securities of Hope; Duely applyed it gives as much toward Assurance as almost any thing, that What Has been shall Be; As on the contrary dark untrodden wayes have Wise mens jealousies always hanging over them, and perillous innovations been by them both shunned and feared: Forasmuch then as Christian Publique worship hath (with us) had little other supportation then this Hitherto, and Many think No other will hold, This may affoord at least a Topicall argument for Continuance; that What hath been May, because of none other the world hath had any of the certaintay of Experience.

| And this step advarceth us fitly to the last plea of *Prescription*, and that confirmed by what it had its first strength from, such continuance of Time as doth more then manifoldly double and treble that Time of Having, which was simply necessary to Prescription; (as each pillar before had some additionall strength:) Which to understand the better, and ground all the firmer, it may be expedient, as in them, to premisse some things of the doctrine of Prescriptions in generall; for this will

will be the more solid and able to endure examination, if we shall not fancy to our selves, any thing, but take that meaning thereof here, that others have both taken and given.

*Mos (1) est longa Consuetudo de moribus tantummodo tratta*, I begin then with that of *Isidore* in the Canon : c<sup>2</sup> (2) *Consuetudo est jus quoddam moribus institutum, quod pro lege suscipitur cum lex deficit* : Combined, as it were, one in another, and are both in effect, *Usage strengthened into a Law*. Of which Law, if there were never a word in this world, nor *Scriptum* est had ever dropped from any learned mans pen, or publique vote to bear Umpire or decide doubts, yet if mens forwardness shall take up, and Use continue, some men goe before and others follow in any good way. *This Continuance by degrees grows up into a Law*, (especially in England) and what is warranted hereby is lawfull enough ; future Travellers may keep that rode justifiably and without controll, because they can urge they see the print of others footsteps which have usually heretofore gone there before them. I said, especially in England ; for here some peculiar influence is from Custome ; Our law seems much made up of it and more then other, so far that whether it or law say the same thing is not much materiall with us as to credit or validity. *Consuetudo verò pro lege observatur, in partibus ubi fuerit pro more utentium approbata, & vicem legis obtinet* : *Longævi enim temporis usus & consuetudinis non est viles autoritas*, says (3) *Braclton* : It is as strong as Law. And (4) before, *Cum autem ferè in omnibus regionibus utantur legibus & iure scripto, Sola Anglia usus est in suis finibus jure non scripto, & consuetudine*. In ea quidem ex non scripto jus venit, quod nūs (5) comprobavit. As if some peculiar regard were given to it, here, Vivitur exempli, we durst almost venture by track, and it may and must be well what others have used to doe before us. What other ground almost besides this doe we know of many things

(1) *Decret par. 1.  
dist. 1. c. 4.  
(2) Ca. seq.*

quid de consilio & de consensu magnorum & reipublica communis punctione, authoritate pis precedente, justè fuerit definitum & approbatum. Sunt autem in Anglia co-suetudines plures & diverse secundum diversitatem locorum : *Habent enī Angli plurima ex consuetudine, que non habent ex iure* : sicut in diversis Comitatibus, Civitatibus, Burgis & Vilis, ubi semper inquitendum erit, que sit illius loci consuetudo, & qualiter utuntur consuetudine qui consuetudines allegant.

(3) *De divisione  
reuum, c. 3. sect. 2.  
(4) Id c. 2. sect. 2.*

(5) *It follows there:  
Sed absurdum  
non erit leges  
Anglicanas (i.e.  
non scriptas) le-  
ges appellare,  
cum leg. signi-  
rem habeat, quic-  
regis five princi-*

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we see done and allowed? Ask the reason of fines, *Herriots*; (or *Heregates*, for that I take to be the right name, *somewhat belonging to an Army*) Relieves, *Widows thirds*, (in a speciall manner here) *Copyholds*, to the eldest or youngest, and severall rules of right yet stinting strife all in severall places; Is not the bottome of most of these, *Custome?* it hath been so? Men have used to pay, or give, or do so? and This reason enough why it should Be so. For men are with some difficulty debarred their accustomed way; Late may not be hindred, what might have been at first prevented. So that if overwise posterity shall at any time think to awake out of that dream wherin their dull and patient Ancestors have suffered themselves to be led out of the way for a long time, as their new wisdom thinks, and champing irefully upon the bit, resolve to call all to scrutiny that hath used to pass, and if it cannot give a very fair account of it self, discharge it for superfluous, Does not

(1) Joseph. de  
Nello Iud. lib. 2.  
cap. 16.

the answer that heretofore (1) *Agrippa* made to some Meddlers, seem especially fit to be served in to their satisfaction? *Intempestivum est nunc libertatem concupiscere*, It is now too late to seek for what they might have desired; *Olim ne ea omittetur certatum oportuit*: *Nam servitutis periculum facere durum est, & ne id subeatur, honesta certatio*: *At qui semel subactus deficit, non libertatis amans dicendus est, sed servus contumax*: They might have chosen, but now they are bound and concluded, the yoke is settled on, and must be born, (as Peter told *Ananias*, Thy money was at thine own dispose, but now thou hast limited thy former liberty.) And

(2) Honestum  
quidem est pug-  
nare pro liber-  
tate, sed id olim  
factum oportet.  
At qui vixi se-  
mellant, et longo  
tempore parne-  
runt, si jugum ex-  
curiant, faciunt  
quod desperato*ū*  
Bominum est,  
non quod liber-  
tatem amantum:  
*Joseph.*

(2) Joseph himself, as his wont is, to the same Men, Gravely: *It is commendable indeed to fight for liberty, but this should have been done in time*: *Those that have been subdued, and long obeyed, to shake the yoke is rather a desperate shift, then an advised attempt for liberty*. There be many things, 'tis like might have been amended at first, and the work of true prudence have cast things in such a mould at beginning, as might have saved (or prevented) many after following and continually renewing inconveniences: But when the lot is cast and the tables shut up, the publique hath appointed, time settled, and continuance made next to immoveable and natu-

rall

all, Then for every thinking man to be tampering with *avita consuetudines*, to amend all he thinks hath been long amis, cannot but be the way to much trouble, or is not much removed from intemperate fury : Because he is very weak that thinks not at least he can mend somewhat in Sir Tho. Moores Eutopia, or Plato's Common-wealth, and it may be, Could, but *Some evils are better born then their remedies*. I confess my self not very Curious before in keeping my self to that strictly may come under the word of Prescription, but to that which hath the nature of the thing, to create a title by Possession and Time Ever: And I know what distinction the Civilians have between it and that ranges also under the same head, of *Usucapio* : That (1) One is restrained to land, The other to goods : One for, *Longi temporis*, the other for yet larger size ; That (2) to take place onely in Italy, This also in the Provinces : But chiefly, that one gives (3) full right of positive Dominion, for recovery ; But the other onely *Exceptiōnēm contra actionem*, to prote&t the Possessor against an assaylant, cannot recover a disseisin : But these niceties are not to be much stood upon by us here in *England*, and the rather for that the (4) Civilians themselves stick not fast to them : We mean, as said, the Thing ; that which gaineth Title by (5) Having and Using, Possession and Continuance; and these two, I suppose, as so many essential parts, doe goe alwayes to that which is Prescription. Which is then, fayes (6) Cook, A title taking his substance of Use and Time, allowed by the law ; *Prescriptio est titulus ex usu et tempore substantiam capiens ab autoritate legis*. He critically distinguisheth again between This founded in a person, Custome in a place ; A man may prescribe, a Mannour or Honour breed a Custome : (but this I insist not on neither.) and the Civill law agrees with ours : (7) *Usucapio est (8) adjectio dominii per continuationem possessionis temporis lege definiti*. But now what time is requisite to create title, would require somewhat a large parenthesis.

(6) Fol. 113. (7) ff. lib. 41. tit 3.. 13. (8) Rectius fortassis, Adeptio dominii: Sic enim ex Ulpiano Duaren. in loc. & Calvin. in Lexic. Jur. pa. 959.

(1) Joan. Calvin. Lexic. Jurid. in vocab. Practicatio. pag. 732. & in vocab. Usucapio: pag. 959.

(2) Id. in vocab. Practicere, pag. 731. where is a purposed, and as the author thinks, first started disquisition of their difference : Vid. etiam Cuiac. in paratit. ad Cod. de prescriptione longi temp.

(3) Vid. Gloss. Quod autem prescriptione in Cau. 16. quest. 4. in Rub. & Cuiac. in the place but now.

(4) As may be seen in Jo. Calv. pag. 732. cited before.

(5) S. Cook on Littleton. Inst. 1. fol. 110. b.

First, abroad : and (1) by the twelve tables one year was enough for moveables, two for immoveables : If a man had possessed bona fide, & ex iusto titulo so long. He was in for continuance. This Justinian altered, (or rather Tribonian,) for three years in the former, and ten in the later, *inter presentes*, but if the owner were absent he was allowed twenty. This was called (2) *prescriptio longi temporis*, which yet satisfied not in all : for it was needfull to bring in besides (3) *Prescriptio longissimi temporis*, which lengthened the leave to claim within thirty years, or in some cases within forty ; and here with them most things stayed.

By the feodall law (1) thirty years precription was good, and He that had no investiture, and had been in so long and done services stood firm.

So by the (5) Canon in many things determinable hereby, though for one Church to prescribe (6) Tythes against another require forty years, and in some, (7) other Cases.

Here at home has been much variety : and we have had no fewer then three sorts of measures to limit and set out the time of possibility of Recoveries by without or beyond the bound of Which, no hope.

(1) Iure civili constitutum fuerat, ut qui bona fide ab eo, qui dominus non erat, cum crederet eum dominum esse rem emerit, vel ex donatione, aliave quavis iusta causa accepit, is, eam rem, si mobilis erat anno ubi q[ui] uno: si immobiliaris, b[ea]tissimo tantum in Italicis solo usucaperet, ne etiam dominia in necato elirent. Et cum hoc placitum erat putantibus antiquioribus, dominis sufficiebat ad iniurias endas res suas praefara

tempora, nobis melior sententia seditur, ne domini maturitas suis rebus defraudentur, neque cetero loco hoc beneficium conccludatur. Et idcirco Constitutionem super hoc promulgavimus, qua cautelem, ut res quædam mobiles per triennium ; immobiles vero per longi temporis possessionem, illi est, inter presentes decennio, inter absentes viginti annis usucapiantur : *Instit. lib. 3. tit. 6. in princ.*

(2) Non usucapies nisi fini tibi talia quinque, Recta fides, justitius, res non vitiosa, Quodites tradatur, possessor continetur : *Gloss. Quod autem, in Caus. 16. qu. 4. in Rub.*

(3) *Vid. Caus. paras. ad Cod. lib. 7. tit. 22.*

(4) *Vid. tit. 20 ad tit. 32 de præscriptione triginta vel quadragesima annorum.*

(5) Si quis per triginta annos rem aliquam ut feudum possederet, & servitium domino exhibuerit : quavis de ea re non sit investitus, præscriptione tamen triginta annorum se tueri potest : *Oberus de Orta. Feud. lib. 2. tit. 26. sect. 4.*

*Ei vid. Gloss. fin. ad Feud. lib. 1. tit. 20. deus. Mediolan.*

(6) *Caus. 16. qu. 4. c. 1, 2, 3, 6, 8, 9. Decretal. Gregor. lib. 2. tit. 26. cap. 3. Twenty, or less than enough in some cases. The words see after transcribed in pag. 273, in mea g.*

(7) *Tit. cod. c. 6. Ad aures nostras pervenit duas Ecclesiæ litigasse super decimis, quas una earum in alterius parochia anni quadragesima possedit : & infra. Tunc fraternitate tenore presertim innoscatur, quod de Iure melior est conditio possidentis ; Quia quadragesimalis præscriptio omnem propositum actionem excludit.*

(4) *i.e. against a Church or a Religious house, tit. cod. c. 8 & Caus. 16. qu. 4. c. 16. approving rules of the Code, de Sacrae Ecclesie Authent. Quas Actiones & Novel. 131. cap. 6.*

*B[ea]tissimo to hold Tythes, a Layman prescribes never. Quia cum Latii decimas deuincere non possint, eas nulla valent prescribere ratione : *Decret. lib. 2. tit. 26. cap. 7.**

1. The yet standing and yet withall  
 (1) most ancient and natural Rule is by  
 comparing with the (2) knowledge of  
 present men; if within the reach whereof  
 any thing be seen and to be said as known  
 and remembred, the Possessour is loose,  
 and may be removed; if otherwise, *Melior  
 est conditio possidentis*, He that has is se-  
 cured his continuance of having.

(3) *For it was by the Common Law, before  
 the Statutes, says Littleton. Sect 170.*

(2) *The limitation of a Prescription gene-  
 rally taken up from the time that no man's mind  
 remembred to the contrary. Doct & Stud. f. 19. as  
 if that had been always. And so in the new Ad-  
 ditions to that Book. Add. 1.1.4. Also abroad,*  
*Ductus aqua cuius ergo memoriam excelle-  
 rit, jure consit ut loco habetur. ff. de aqua  
 quorū l.3. Sect.4. Ac forte non improbab-  
 liter dici potest, non esse hanc rem in sola  
 presumptione possum, sed jure gentium vo-  
 luntariō inducunt hanc legem, ut possit o-*

*memoriam excendens, non interrupta, nec provocatione ad arbitrium interpellata. omnino dominum  
 transferret. Credibile est enim in id conciliare gentes, cum ad pacem communem id vel maximē inter-  
 esset. Grot. de Iure Belli. l.1. c.4. Sect.9.*

2. But because this might flag, or prove uncertain, and is  
 always wavering, some more certain bounds were thought fit  
 to be enquired after, which as stakes fixed, at least at one end,  
 might determine *huc usque* shall inquiry come, and no fur-  
 ther; precisely laying down what might be expected, as  
 'twere to a year and a day. As in *Glanvils* time, the Claim  
 must be laid in some (1) Cases, since the Kings last Voyage  
 into Normandy; in (2) other, since his Coronation; in  
 (3) Writs of Right, his Grandfather *Henry 1.* and if on this  
 side these severall limits, nothing could be shewed to mo-  
 lest, &c. beyond was as good as nothing. In *Braetons* time,  
 under *Henry 3.* the wideit Writ of (4)Right was bounded by  
*Henry 2.* time, others narrower, according to the limitation of  
 the (5) Statute of *Merton*. In (6) *Fletae* time, who lived  
 (likely) under (7) *Edward 1.* from the days of *Richard 1.*  
 according to the (8) Statute of *Westmister 1.* cap.38. And  
 this it seems remained to *Littletons* time, about *Henry 6.* for  
 (9) he mentions the same to be the *Hercules Pillar* then, be-  
 yond which no Claim could be laid to any thing.

3. But albeit these times of Limitation were reasonable  
 when they were made (I make bold here to (10) borrow a  
 little piece) yet in process of time (there being se: times ap-  
 pointed in former Kings Reignes, from which as a Barque from  
 the fixed Land the future went always further and further),  
 the times of necessity grew too large wherenpon many Sutes,

(1) *In tract de  
 de leg. Ang. l.1.3.  
 c.33,34,36.*

(2) *l.b. cod ca.3.  
 3,6.*

(3) *l.2. cap.3. &  
 l.1.2. c.10*

(4) *Braet. de de-  
 falcis, c. 5 f. 373.  
 & tract. de ex-  
 cep. c.19.5&c.1.  
 f.416.*

(5) *20 H.3. c.8.*

(6) *Flet. l.4. c.5.  
 Sect.13 p 224. &  
 l.6.c. 6. Sect.3.  
 p.401.*

(7) *vid. Selden.  
 diffent. ad Flet.  
 c.10 sect.2.*

(8) *Made about.  
 3 Ed.7.  
 19. sect.170.  
 f.343.*

(10) *From Cook.  
 in his Instit. 2. ch.  
 1st statuta of  
 Merton. c.8.p 958*

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Troubles and Inconveniences did arise, and therefore the makers of the Statute of 32 Henry 8. took another and more direct course (by setting stakes as it were at both ends of the stage,) which might endure for ever; and that was to impose diligence and vigilancy upon him that was to bring his Action, so that by one constant Law certain Limitations might serve, both for the time present, and for all the times to come, viz. That the Demandant should alledge Seisin in a Writ of Right not above sixty years next before the Teste of the Wrist, in others thirty, in others fourty, in others fifty. This yet left some difficulty, which was after explained in (1) Queen Maries time, and pieced out as to some trifling Sutes according to much (2) desire in (3) King James his time, and so do things I think remain with us at this day. Now from these severall Limitations of Prescription abroad and at home, and about them I cannot but note their general end, which was no doubt to prevent Sutes as much as might be, depending on proof remote and of dark days past, by limiting to fourty, fifty, or sixty years, seldom farther, &c. All which it was also fit to note ~~regd. mātē~~, or at large, that by seeing what has been, not in this place or that, but All Abroad, we may the better make estimate of what we shall finde in our Case, by comparing the length, (wherein is also the strength,) of This prescription, with that has been generally reputed enough, and to establish a Right elsewhere. I confess the thing it self as to the equity of it seems not to me at first sight altogether so (4) fair and reasonable as that Thereon any thing should be settled, or Therefrom derived; for it seems as it were many times to settle a (5) Right upon a Wrong, a Due upon an Exclusion, (perhaps of Right) and at a venture such a one shall keep, what by Gift, Succession, Escheat, or otherwise May in due scanning perhaps belong to another: (Perhaps also to him that has it, But this is Uncertain, and Justice should never proceed but in a regular, constant, certain, *sure way.*) And therefore the prudent (5) glois upon the Decree scarce allows it to be according to the Laws of Equity

(4) Non Prescriptionem esse odiosam. gloss. Præsumid ad nov. vel. 9.

(5) Quod initio vitiolum est non potest tractumem poris convalescere ff. de diversis seg. l. 29.

(6) Nam de jure naturali prescrip. tiones non sunt inductæ; nam de jure naturali iniquum est aliquem ditari cum aliena injuria. gloss. Legis. ad Caus. 16. qu. 4. cap. Præsumid.

and

and (1) Nature, w<sup>ch</sup> would by no means have any one (2) enriched by the spoils of another, as here it often is, always may be. But then again on the contrary part it would also be considered, That there had much need to be some (3) end of strife; The negligent is but duly punished if he will not come in in some reasonable time; He knows written in the very face of the Law his perill if he do not come in to claim his own, nor is it fit Justice should wait ever; And if Controversies should be admitted of things whose knowledge is so farre off and out of our reach, that almost all the foot-steps are worn out by the continuance of Time, Our life is so brittle, changes so frequent, Arguments from what we see not so but probable, and yet so many, and on both sides, But above all the wit of man so fertile and pregnant the quarrelling way, That still some color would be found out or other, Why that should not be, that is, and that in the place thereof, which is not, and so our lives would be spent with quarrelling, as our means with charge: Wherefore, & *Ne dominia rerum sint semper in incerto*, as was the gloss before, it was prudently because necessarily determined to have some end, wherein if there wanted somewhat of Justice, there might be amends made in freedom from perpetual trouble and all-consuming charge; some *Hercules Club* must be found out to strike the matter home in certainty one way or other, or rather some *Alexanders sword*, that what of the *Gordian knot* could not be untied, it might cut atunder, so here: when it grew tedious or rather impossible through the manifold complications of crafty Contrivances to bring the matter, whose whole stage was at a distance, to a certain end, for certain yet let some end be; and at a venture settle upon the Possessour: He *May* have Right, he has had for a long time the Thing, Possession is many points of the Law, (because every man is supposed at home, and that to be a Mans own in which he hath dwelled a long time without higher acknowledgement or any ones controll,) and this He hath had no one can remember to the contrary but ever: therefore let him Continue to (4) injoy, and he that was so lazy as not come in some reasonable time for his Own, let him now see one have

(1) *Nay, it is contra naturalem aequitatem, gloss vel injuria ad se de negotiis gestis. l.1.*

(2) *As old Rule of Pomponius, Inter naturae et. quum est, nemis nem cum alterius derimento & injuria fieri locupletiorem. ff. de diversis reg. iuris ant quilibet. 206. & vid. de conduct. indeb. l. 14.*

(3) *Omnis actus infra certum tempus habent limitari. Flet. l.6. c.6. Sec. 3. Tollit amensuratiōnem (dosis) aliquando diuturnitas temporis in perpetuum, cu[m omnīs tērēs, la & omnis actio injuriarum limi- tata sit infra cer- tum tempus. Bra- ction. de A.R. do- rit. ca. 17. Sec. 5. f. 314.*

*Tales, and supposes the best beginning Law can give, Hobards Reports in Slades Cafe, pag. 297:*

it

(4) *Prescription and antiquity of some jurisdictions made.*

*The Civill Right*

it that will be more carefull of it, and perhaps do more good with it. This may not be well, yet better then what is worse, Not exactly just, but the *Good of Peace* compensates the *Evil of Injury*, and a quiet sudden losl may prove better to the loser then a gainfull eternal contestation. *Bono igitur Publico introducta est usucapio & prescriptio*: as *Gains* [1] spake, This is now then for every ones good: *Ut sit aliquid litium finis*, as [2] another makes it out; for now there will be quietnes what ever there be else or more. [3] Whence *Valentinian* made thankfull memory of his Predecessour *Theodosius*, as in favour of humane peace and tranquility, setting forth his Edict of this nature, which *Cassiodorus* called the great Patroness of mankind; And if it do nothing else, it keeps the Peace, and where Peace is, either ready there are most worldly commodities, or *Non invita sequentur*, they will soon follow.

But this prescription that must be thus the sovereign and enriching Peacemaker, a virtual fine, (in the rational import of that word, *quia ponit finem litibus*,) must [+] have three Conditions, which I but name. It must be, 1. Long: (how long hath been said already.) 2. Continual: that is [5] without interruption, by word or deed, by violence or gentle claim. 3. Peaceable, by the true Owners patient and dead negligence. For if he stir, the bone cannot settle to grow awry, the Winde blowing hinders the Water for a time settling into Ice by coagulation; so strength is here forbidden to grow of the Adversaries Right, by him that if he strives cannot recover his own And these three things observed give a considerable [6] Right, against all but one, was said before; Now against him: for Time though it can do nothing, yet by it are done many things, and though it work not at all, yet without

(4) *Nunc autem dicendum qualiter transferuntur dominia fine titulo, et traditione, per usucaptionem, sc. per longam, continuam, & pacificam possessionem ex diu, turno tempore & sine traditione, &c. Bracton de acquir. rerum dom. c. 22.*  
 (5) *Quod si per naturalem possessionem possedit, interrupta fuerit, a die recuperata possessionis novi*

*triginta anni in omnibus prescriptionibus numerabuntur. Gratian. Caus. 16. qu. 4 c. 15.* (6) *Usucapient plenum jus incipit habere, ss. de rei vindic. L. 17. in fine. Sicut tempus est modus indicenda & tollendi obligacionis, ita erit medius acquirendae possessionis. Longa enim possessio (sicut jus parit jaspissimandi & tollit actionem vero dominii, &c. Bract. ubi sup.*

*An abator or disseisor dying sessed after five years loses possession gaineth Right to his heir, that the new possessor is to his alien, and if he les it run to forty, shall never recover. Bacon. of the use of the Law p. 25. For Usucapio inde dicta est, quod per usum aliquod capitur & auctor. Vnde enim per lapsum temporis a limitis corporales priori domino, & transfert in alium. Calvin. Lexie Jurid. p. 595.*

(1) *ff. l. 41. tit. 3.  
L. 1.*

(2) *Fulbeck  
part. ult. c. 4. l. 20.*

(3) *Remembered by  
Cuiac. in paratit.  
ad Cod. l. 7. tit. 34.*

it is nothing else wrought. *Tempus ex sua pte natura vim nullam effectricem habet; Nihil enim sit à tempore, quanquam nihil non sit in tempore*, as (1) one spake pitifully. And therefore, as it is a means of (2) dissolving, so it is also of (3) contracting obligations; Settling and unsettling, binding, loosing, doing and undoing. Indeed every thing is done by Time, and without it is done nothing that is done. The Crooked grows Straight by it, the *wrong, right*; *Ursarpation, Justice*; the *Invader*, an Owner; And he that mought else has but what *Length of Time* can give, has (with that, and possession supposed) enough to answere all that can be said to disturb him.

*feste appareat, non videretur id alio secis animo, quam quod rem illam in suarum rerum nus-  
mero esse nollet.* Grot. de jure bell. lib. 2. cap. 4. Sect. 5.

Which Soveraign, and almost unreasonable priviledge is allowed upon (4) a double consideration, as well of favour to the possessor, as hatred to the negligent of his own not-seeker: for if he be possessed upon valuable consideration, *bona fide*, and deceived but as an honest wise man might be, there is so much pity of his wrong that he is kept in in favour and for his wrongs sake: But if he were a meer *invader*, and as he entred, continue a meer Usurper, yet so much doth Reason and the Law hate him that is slothful in his own intereste, that rather then he shall have any thing, wrong shall take place (*by right*) against right, and rather then Justice shall always wait upon him that negleets himself, her constant purpose of giving every one his due shall wax weary, and give him onely dismission of suit at last instead of remedy. *Currit tempus contra desidiosos, &c.* as was said, and though the Law could even wish too that He should not have it that has, yet in hatred of his sloth that shoulde seek, He shall never be put out, nor the right owner in.

*natum fide per tricennium rem alienam possederit, simili gaudet praesidiis, &c.* He possedentes introduce sunt favore possidentis, & odio possidentis, quia lexaret his, qui bona fide & iusto titulo, vel bona fide tantum possident: edit autem & puniit circa rem tam neglecentes & deludes. Quod simila fide rem alienam quis possidere certi punit, ut amas & verteris omnem petentem exceptione tutus erit. *Gatian, ubi hunc. And yet the intruding possessor afterwards disentended what ay-  
be, and by the least occasion set beside the judice or kept from recovering: But the lacy ere shall least and last be relieved.*

(1) *Grot de Iure  
Bell. lib. 2. cap. 4.  
Sect. 1.*

(2) *Vid. Flet. I. 4  
cap. 5 Sect. 12. &  
Bract. de Actione,  
cap. 2. Sect. 13. E.  
100.*

(3) *Vid. Flanca.  
cap. 15.  
Qui enim suam ab  
alio reterret se,  
nec quicquam  
contradicunt multo  
tempore, is nisi  
causa aliquam.*

(4) *Prescription-  
num aliæ fidei im-  
introducte odio  
petentis & favo-  
re possidentis, a-  
tque tantum odio  
petentis. Qui  
enam bona fide,  
& iusto titulo  
rem precentis  
per decimam,  
ab eius vero per  
viciensem tenui-  
cet, perpetua ex-  
cepione tutus  
erit, et insolita  
a fidei aliis,  
sed eorum adver-  
sus existentes  
quibus res ipsa  
obligata fuerat,  
etiam adversus  
dominum, ad  
hanc regam si habe-  
ejellet. Statutum  
multo diuina, bo-*

## The Civill Right

(1) Dicunt est,  
qualiter, &c.  
nunc autem  
dicendum est  
qualiter acquisi-  
tio possedit et  
incorporalitatis  
cut possedit, iuris  
viz. aliquam ser-  
vitutis, per pati-  
entiam, que  
tral ius ad con-  
fessum & longum  
usum &  
pacatum, tunc  
constituta vel  
expressa iusti-  
tia. Patientia  
vero trahitur ad  
confessum, &  
acquiritur posses-  
sio iuris per uti-  
litas uti de-  
minus proprieta-  
tis liberum ha-  
bens suum, ex  
patientia per-  
mitte, it uti vici-  
num suum, pre-  
fens & sciens,

in fundo suo, aliqua servitute, ubi ius utendi non habuerit, sicut in pastu peco-  
rum, itinere, vel aqueductu vel huiusmodi per longum tempus, pacifice time interrupcio-  
ne: *thus pres.mst leave and creates right.* Bracton ubi sup.

This I take to be the doctrine, and general nature of this accident, in part abroad, but most at home, leading to what prescription is, to our purpose: from which it cannot but be evident, That such a thing there is, The Law allows it. There is plea for it and from it; In time it bindes the hands that were at liberty, and creates a right to that was at first but a lazy permission, or courteous concession, or perhaps violent intrusion: We have seen in what time this may be done, (more then by our bare conjecture,) any limitation scarce exceeding sixty years; and that in a Writ of Right (the highest with us) the possessour need not prescribe farther to barre out any pretender. In some tender speciaall cases indeed, (I should

should have said,) 100 years were allowed, as (1) in things given to charitable uses which might be claimed within the Century, but this after shortened to (2) forty.) and in the ancient (3) endowments of the Church of *Rome*, and formerly no (4) prescription could run ever against *Res Fisci*, or (5) things of a Temple, or (6) Sacred or Publick, or for Lay-men, as (7) before, to take up Tythes, but where any could run, in common affaers, the Stage was but sixty years of length, or fifty, or forty; Sometimes but twenty, or ten, or two; And he that came not in within this space of time served a Prohibition upon himself, He might not though he would at any time ever after.

(1) Ut inter divisum publicius juri, & privata commoda com-  
jacenti creto  
et lantinus, si-  
quis al quam te-  
ligerit legis  
tacem vel lega-  
tum, vel fidei  
communum vel  
donationis etulo  
aliquid dederit,  
vel vendicat,  
five facio-sancit  
Ecclieis five ve-  
ne abibus Ze-  
non bus vel pro-  
chorou his, vel

monasteriis malorum, vel virginum, vel orphanotrophis, vel brephorophis, vel genitriciis, sive non iuri civitatum, vel donationum, vel venditorum, vel relictorum eis sic longiora  
temporum solita præscriptione coæstada. Sed et si in repletiæ capiutorum quædam pecunie,  
vel res relectæ, vel legitimo modo donatae sunt; & carum exactum longissimam esse censum. Et  
nobis quidem cordi erat nullis temporum mensis hujusmodi actiones circucladi; sed ne videamus in nü-  
nium hanc extende, longissimum vi: x hominum tempus eligimus: & non aliter cum actionem si in  
concedimus nisi centum annorum curricula excesserint, tunc cum tantu oculo hujuscenamdi actiones  
evanescere sinimus. *Cod. de Sacro iure. Ecclesiæ, l. 23.*

(2) Vid. in. Authent. Quas actiones, those following, &c. Ut omnes præscriptiones contra Ecclesiæ,  
sint 40 annorum. *Novel. 131. cap. 6.*

(3) Vid. Novel 9. & Authent. Quas actiones, aliudg b & now, & Graian. *Cap. 13. m. 2.*

(4) *Instit. lib. 1. tit. 6. de vñcap. Sect. 9*

(5) Universa terras quæ à colonis vel emphyteuticarunt dominici juris, reipublice, vel iuris Sa-  
cerdotum Temporum, in qualibet provincia venditare, vel ulli alio pacto alienare sunt, ab his qui per-  
petraverunt atque contra lexes eas detinent, nulla legi temporis præscriptione officiante jubesca relatu-  
ta ut nec pretrumquidem inquis comparatoriis reposcere licet. *Dat. 5. non. Iul. Conf. ad. A. 4.*  
*& Euseb. Conf. Cod. lib. 7 tit. Ne res dominica vel templorum venditatio, temporis præscriptione  
submoveatur. L. 2. Tis tis night never be secured, nœ the purchase recovered.*

(6) Vñcaptionem recipiunt maxime res corporales exceptis rebus facti, sanctis, publicis, populi  
Romani, & Civitatum, item liberis hominibus. *ff. lib. 41. tit. 3. L. 9. agreeable to Instit. 2. tit. 6.  
Sect. 1.*

(7) *Fa. 268. in Margine.*

Now then for application of this generall doctrine: and How can This be Then but All and throughout a firm and strong argument for that I contend for? Are these things in the Tables of our sacred Law? And Does Time so much of it self Alone, destroying one mans right, and setting up anothers? And shall it be allowed to do nothing alike in a case respecting on God and Religion, if the case be the same? And proved? sc. that for so long time the possession (whereof enough before) hath been continued and lengthened here as

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Qyvbi eadem est  
ratio, ibi idem jus.  
Cock Inst. 1 fol.  
56. It is a maxim  
in the Law of  
England, that  
All eas. like an  
so other eas. shall  
be j. dged after the  
same Law as other  
eas. see the Doct. &  
Stat. D. a. 2 c. 4.

may make out that is reasonably called 'Prescription'. Doubtless the Law is still the Same, and that good in *one mans case*, (it ought to be so,) that Was in *Another's*, and Where (1) the Reason is the same, It ought to be: for Right knows no Persons or Things, and prescription or continuance of time should bee reasonably interpreted to doe as much For the Church as Culmome or the same continuance does and may Against it. It remaineth therefore that this onely thing be inquired into, Whether such a Right hath been in the Church? and Time out of minde? Sixty years? or other due length or space that hath used to protect and keep safe the present possessor by exception to any intended ejectment, (which if the whole doctrine before is of use by all its strength to create Right and secure continuance Here, The duly and truly prescribing tenant cannot be ouuted:) And this is as evident as Story, Record, Books, Writing., or other Memorials of any sort that give account of past times can evidence or make good unto Us. For, Ask the oldest man living, What is his knowledge? Ask him farther, Whether he ever heard his Father say, or that his great Grandfather should tell Him that in any of theirs or the next Ages before Tenthys were not issuable, and *ex jure* demandable to the Church out of All Lands? Impannel a Jury of twice twelve times twenty of the ablest of that County, and the next, and put them upon the question, Whether they doe not know and believe this Custome to be and have been? Or, lastly, imitate the Conquerour, and iend for twelve men out of every Shire, *legibus patrie optimè institutis*, and sworn (as He did to Them) *Ut quoad possint recto tramite nec ad dextram nec ad sinistram divertentes, legum sharum sancta pacificant, nihil prætermittentes, nil adentes, nil prævaricando mutantes;* and Put to them What are their *avite Consuetudines*, and whether this be not one, *Ex omni annuat decima garba Deo debita est, & ideo reddenda*, and so for the tenth Colt, Lamb, Flice, Fish, &c? And see what they will say. Go to the Lawyer, and let him give his Councell from his Books, Reports, Statutes, Laws, or Charters, &c. Let him turn them, as upon double-feed diligence, and say, whether it be not obvi-

obvious in his Rolls, Records, Customes, Cases, Books of Entries, *Natura Breuum*, Laws, Ordinances &c. still a supposition, and glance enough through all Ages to prove the same: 'tis a question of time, let him give instance to the contrary in This or That, a former or later, Any Age or Kings Reign. Deal but within the compass of *things known, and Christ worshipped*, and I dare trust to his ingenuity, for an answer punctual, home enough, and agreeable to truth. In Hen. 8. time, Hen. 7. Rich. 3. Edw. 5. and 4. and so, (like the Cobler,) back, back to darkness, and almost bare names of Kings and Government, and his he not still as evident mention (by reflection, and as of things that had their proper scene of a riot and agitation elsewhere in another room) of these things in his temporall affairs as any? I would but the whole Issue were made up into a Demurrer of this expectation for satisfaction Alone: There is so much ingenuity and presumed honesty comes along with that learned Gown, assured, that all the sons of *Puerus* (*Quid's malore into finxit pectora Titan.*) or sacred Ministers of Jesus Christ would expect doubtless no better sentence of Umpirage (either for the whole or this part of their right) then what his knowledge could, his readiness would, his justice must and ought, and his conscience nor wills, nor dares, nor can but give in according to his evidence. I durst rely upon whom I never tryed: Wayward men may calumniate, and wilful men mistake, and weak men suspect or revile what they do not, perhaps cannot understand; But there is with that sort of men (the sworn Servants of Justice, and, as they have been styled, (1) Apprentices of the Law) the Quintessence of sound reason & immovable honesty, profound judgment and vowed integrity, a love of the truth and painfully acquired knowledge of what it is, that I doubt not but all just and honest men would have cause to go away from them satisfied, and rest in their determinations, as of *Lovers of Truth, and Oracles of Sincerity*.

Take we one for all the rest, and not to be set behind any of the rest, who wrote purposely near half a prescription space of years since upon this argument, even most learnedly.

Put

*M. Selden in his  
Hist. of Tythes.*

(1) Fortesc. de  
Laud bus leg.  
Angl. cap 8.

Put to him whether or no there have not been time enough to make a prescription, and a prescription, and twice double as much more since Tythes were settled! (there may be error in my form of expression, but take the thing (1) meant,) and if he doe not grant enough to this purpose, and More, let Mee have said Nothing. He more then pretends to fit things to the utmost, and with Curious Diligence and watchfull industry to dig down to the root of the ancient constitution of things, and so give the face of them as they have been from the beginning without any *fucus* or deceitfull gloss; and though he rove and fluctuate as long as any, yet he stayes soon enough to have somewhat to spare, and yet prescribe over and over, and over. From his eighth Chapter of Laws, little can be had, but *de Jure*, of the right, which has not alwayes taken place in action; (for good Laws have not alwayes had the good hap to conveye so much felicity to the world as they might, by being throughly and fully Obeyed:) but in the following he comes home. Chap. 10. He (2)acknowledges some payment under the Saxons by *K. Knouts letter* yet extant, or if not, punishment: Many Churches under the Conqueror are (3) marked with, *Ibi decim⁹*, in that most authentique memorall of our Nation, or perhaps this part of the world, the book of *Domus-Dei*, as in *Sussex, Hampshire, about Basingstoke, &c.* though this neither generall, nor common then. Other(4) evidences of duenes and payment are *under Hen. 1 & Hen. 2. and to them*, And now they began to settle: A parochial Right is (5)acknowledged and supposed by *Alex. 3. & Hadr. 4.* in their Epistles hither treating of them (they lived about the beginning of *Hen. 2.*) and it were somewhat hard to disbelieve in matter of fact, such and so solemn asseverations and depositions. But about *Edw. 1.* a parochial right is granted by himself, evident from the *Stat. of Circumspecte agatis*, and the *writ of Right of advowson*, of that date, where the *Esplees* are chiefly laid in *Tythes*: (6) And by the practise of the Kingdom it became clear law (as it remains also at this day, he says) that Regularly, if no other title or discharge, to be specially pleaded or shewed in the allegation of the defendant might appear

(1) *Hoc unum petens, ut non verbo: um Ele- gantiam, sed vim ierum expenden- dam pute.* Amb.  
Epist. 1.1.

(2) Pag. 278.

(3) Pag. 280.

(4) Pag. 281.

(5) Pag. 283.

(6) Pag. 285.

pear, every Parson had a common right to the Tythes of all annall increase (prediall and mixt) accraining within the limits of his parish, without shewing other title to them in his Libell.

After, giving other things, as of Cornwall, from Chancer, &c.

He (1) concludes plainly the received and acknowledg'd Parochiall right in the practise of those times, which hath to this day continued: Neither is it necessary to adde more for the uniform continuanc'e of it. Save where a Statute hath discharged, or a Modus decimanti, (which being Discharges, doe clearly presuppose and imply oneration:) And this (being a Lawyer, he says) is Regularly clear Law.

(1) Pag: 88.

Some curiosities there follow, and judicious, usefull, needfull disquisitions, but so as nothing impeaches a full and universall Parochiall Right settled nine half hundred years agoe, even by his concession: And he hath been generally taken to be no great favouring friend to what more then needs he must grant in the Churches behalfe, though in this particular I never held him injurious or undeferving: With his grant taken to be most sparing, he howsoever grants this, and this to our purpose Enough. He avers moreover Chap. 11. that (2) after

(2) Page 362.

Ianoc. 2. time, all Lands paid according to the Canons; and therefore no other title was made by the Archdeacon of Lewes to the Tythes of Barrington then in demand, then that the Land lay infra limites Parochie sue de Barretin. & chap. 14.

giving the history of their Jurisdiction tripartitely, into 1. that was before the Norman. 2. to Hen. 2. And 3. since: he has enough to the same purpose, the minde whereof having been given before, needs not to be here repeated again. And these things at home are agreeable to what was abroad, as cut out by the same rule: for as times then were, the Canon

sat over all, which how it discharged it self, was shewed (3)

(3) Page 167.

before, Chap. 7. for Parochiall payment by the obeyed Decretals. (4) *Quia perceptio decimarum ad parochiales Ecclesiias de Jure communi pertinet*, as the reason is given in case

(4) Cap. cum con-  
tingat. tit. de  
decimis Decret.  
Gregor. l. 3.

of new-broke grounds: and the action accordingly was, *Jure communi fundata intentio*, that is, by common right Tythes prediall and mixt were due to the Parish Recetur, if they were not by some speciall title enjoyed by some other Church, or discharged.

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discharged by Canonickall exemption : sect. 1. for they were not so much given or granted by the Owners as then supposed, or exacted or expected of or from them by vertue of any act of theirs, as to concession (of the right at first) or after delivery, As they had been Reserved by God at first, at the grant of all, *in signum universalis dominii, quasi quodam titulo speciali sibi Domino decimas reservante*, as the Law speaks, Never making the right out of himself that it might return : As a load of Hay, a Mine of Lead or other Metall belonging to the Lord, is not so much a due issuable out of that land he hath let to his Tenant; as a reservation to himself at first when the Land was let, and he parted with the fruit of the ground ; or as if the same Lord cuts his wood or timber, and carries it away from his tenants land, His tenant *Pays it not*, but *gives way to the taking* of that was always excepted and reserved; Or as no Mannour or Parish ever laid out any Kings high-way, but the King alwayes kept it for his other subjects out of the grant from himself : So, I say, God reserved (the times seemed to take things so,) the tenth as his part never parted with, and as his Own (somewhat like a quitrent) it might be seized on *Jure communione* without any order or Act of man, by vertue of primary exception or reservation. And according to these things, the Rector in his libell, upon the allowed *Actio Confessoria*, needed propose no more then that the demanded increase arose within his parish, the rest would follow : Which action, if Durand disallowed, grounded upon common right supposed, and approved rather of a *Conditio ex canone*, by some positive male Law, (not by generall right but Statute-Canon-Law, or agreed on Constitution) this is all one to my purpose, and for an allowed granted right in those days, which is all I seek for. Of what is behither, (trusting to any that pretends to know,) I need say nothing.

All this from one man, yet living, and worthily of fame enough for learning, not confined by our own seas, nor scarce Christendome, Neither can he but know, and I beleeve, will be ready to averr many times more in this case; that if homage were paid to the earthly Lord, rents or services to the publique

publique, or any thing to any man, this, *signum universalis dominii*, was still allowed to Religion, (of more publique and nearer, inward concernment then any thing else) even to Gods house (who is supreme Lord of All) and his publique service; neither may his Ministers but prescribe long enough for it, as due, under the notion of equivalent to what was Levi's under the law, Behold I have given them the tenth in Israel (εν καίνῳ) for their lot, for their service which they perform in the tabernacle of the congregation.

2Cor. 13.31.

But now steps forth Doctor Tildesley: whom this large extent satisfies not, and therefore he undertakes the higher dark times of much further, and would not but that universal right and possession of these dues has been here Conzall with the Christian law, and of the same date for beginning as Baptisme and the ten Commandements: He endeavours to reply to the exception, and answer the plea for the broken payment till about Hen. 2. As from the secundum Antiquam legem debemus, in K. Knouts Epistle, & sicut pradecessores nostri concesserunt, an ancient grant Then; from the grave testimony of *Austine* our first preachers time, inserted into K. Edwards so famous law; from a likely fair interpretation of those scant returns of Tythes in \* Domus-Dei Book, that it might be but according to the opinion of the Inquisitors prevailing (as to the affirmative or negative) in the question of Expediency or Duty, Whether it were fit or meant they should be returned, &c? But I examine not the validity of either's arguments or answers, and as little minde the seen possibility of more strength on one part, or reply on the other: let their arguments fight (their mindes being in Charity;) which ever prevail, I have in the mean time gained a certain doubtfulness of those times under contention, and as much certainty of enough beside since: on This side over and over sufficient for precription; Beyond, that which May yet afford more store, and this from those were able and are famous for their purposed disquisitions.

Now after this abundance together, it may be no doubt superfluous to look abroad for more. What is within the reach of common observation could hardly escape their views,

O o especially

*Animadversions  
on Mr. Seldens  
Hist. of Tythes.*

\* I have retained this word all along in difference from the "shall represent" thereof. As well because it seems most reasonable giving something of the book, not usually needed, sc. that it was kept in the Church; As also because I had information from the most Reverend and Learned L. Primate of Ireland, that it is the form he hath seen in many ancient Manuscripts. Afterwards I found the same also in the Latin preface to the third book of the L. Cooke Reporters. The coincidence of Both which to mine own conjecture before, did not a little swell and stablise my wavering and doubting confidence.

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especially His, who had examined that and more: What might be had from history, pleas, writs, statutes, and other information of best but common credit, would be but to light a candle before His Sun, or as the gleaning of a little after full heaps, and therefore may well here be spared: In short, The clear evidence of Things abroad is such, and the light of Truth concerning them so common beating in every ones eyes, that no one that is fit to speak, but must have knowledge enough to say, that for Centuries upon Centuries, ages and generations, and the repeated revolutions of many hundred years, to create prescription by continuance of paying and receiving, There hath been time enough, and enough, and enough and spare; and if twice five times sufficient to raise it in another case may here serve, (set aside the otherwise sufficient pleas of Donation and Possession) none of this will be wanting with either greatest assurance or faire probability.

It is said there could be none without possession (whereon 'tis founded,) and every one knows where the dues are kept all the year; This was prevented before: for both a Possession, and through continuance of time is for that Right is made use of but once a year, or when there is occasion: Let the truth represented in a few more lines of Master Selden be the Coronis of this part. He observes, [1] that out of any continuance alone of voluntary payment a kinde of Parochial right was then created, (speaking of about the ninth Century) though a voluntary consecration might do the same; and [2] afterwards, as this was the cause of Right to a Church whereto they had been so conveighed; so, Continall Payment of many years did so settle the perpetuall Right of the Tythes of any Family then, that Whither soever it transplant-ed it self, it must still send whither it had used; as if this continuance had for ever so bound it, that it might not pay them otherwise. This then; and it was about seven or eight hundred years ago; How much more strength then must an usage that has its force and being from time, and so according to nature, should, (as it does) *tractu temporis convalescere*; get vigour in its age, and be more fat and well liking? How much more strength, I say, must this use have Now, that how much

(1) Chap. 6.  
Sect. 2. p. 72.

(2) Pa. 73.

much the older it is, is still always so much the stronger? And if in some Countries there may be a prescription, *De non decimando*, totally, and with us it usually prevails, for a *Modus decimandi*, which is against the Church, compared in matter of Right or Wrong to an Orphan before, How much more reason<sup>[1]</sup> is there that the Church, *The Pillar and Ground of Truth*, should prescribe for herself, then others against it? that that prevail which tends visibly and likely to the support of the Gospel, then what may prove the ruine and suppressing of it? whereby the service of God may be upheld, then whereby it may cease? Shall Time be of force to say, A Right shall Not be paid, and shall it not settle more firmly, that A Right shall? It must not, Rather then it must,? In other things prescription is generally a good Plea, for Rights and things, and so Doubtless it is in This.

(1) Merito summa habeatur Ratio, quæ pro Regione facit. Hobards Reports in Slade's Case, pag. 295.

## C H A P. XXXIII.

**T**amquam opus exegi, and hope I have not failed in either part of my undertaking, that if either Title of three, and All good be Good, if either string of three will hold, and all usually strong enough, I have not fallen short of the proof of a Civil Right, and that by that Law by which here All things are possessed. Is that any ones is Given him? We have shewed plainly this *Donation*. Can this gift be confirmed by confirmation? This hath been offered and largely diffused, all abroad abundantly. Is that I have, Mine? Sure, 'tis naturally, and none shall deprive me without wrong for Possessions sake. Now where is the Possession Here, the World sees. May this Right founded in God, in Heaven Originally, on Man but derivatively, and by consequent substitution, fright boldest men from laying on their hands, and

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scambling with their Maker? What even the Law hath said, in this behalf hath been heard and may be remembred. *Ought I still have, what I Have had?* I challenge a liberty, a way, a right, a power to present, meerly because I have had, and so ued: And this is not here wanting for Ages and Generations. The result of all questionless, A C I V I L T I T L E, firmly: and by these three distinct ways, by which men Generally injoy with us, and they have enough in Any, by All meeting is here a *Conspiration* of at least a treble sufficiency. Bleſſ we God, who hath not left the support of his Gospel Here to the Good will of Men, and uncertain, tottering, voluntary Contributions, but as was said at beginning, hath given habitation to this truth (with us in England) Firm and Stable, and by the helping seconding acts of favouring state raised and established (as to the outward frame and support thereof) his Temple on the Mount of the same materials and under equal shelter of temporal strength and firmness, with the lower buildings of the valley; The Church is as strong, stands as fast as the manour house, and even as much Lower Law for the Civil Temporal Right of these Dues, as any other mens Possessions or Inheritances do lay claim to for their sufficient suppor-tation. *This is the Lords doing and Wonderfull in our eys,* and so let it be also gracious, and the occasion of much thankfulness with his People: Looked upon as no other then a Work of his Very favourable providence for the safe and long Continuance of his own honour, and one of those comforts that may be among the Greatest to those that love the Lord *Jesus Christ* in sincerity; A means of firm establishment of the Gospels Ministry, and to hold out that blessed light of the Christians Law to us which may be a Lamp to our feet, and a Lantern to our paths, to guide us into the ways of peace, in exclusion of *Saturn, Jupiter, Mahomet, Frea, Thor, Woden,* or whosoever shall go about to recover or obtain a place of honour in our Temples, now dedicated to the honour of the most high God, and his Son *Jesus Christ*, with the Holy Ghost, to whom be all honour and glory in Them and through the World for ever and ever. And all these things made good too by no other then those have been reputed most

most proper strengths, The Laws of the Land, No other Language almost used, no other Books, or but rarely, cited, Among that world of Volumes that are of other things, and some on this subject, in another way, yet none chosen, or stuck to, but these & the most of them such, and so classical and authoritative, that they make the Judgment even of the very Judges. I desire may here not unseasonably be awaked to present remembrance and due observation which was laid down before, but had There so much amplification, because it was to have here its present use and operation, and it is, that *This Law* is here below in this World, *The onely Umpire of all things, the Rule of Right, the Judge of Own, the Stinter of Strifes,* and the only *Didoes Thong* that makes out the Line by which the Limit is drawn, that fences Severals from the Common and among themselves, the onely Donor and Continuer, Preserver, Sustainer and Establisher of Every mans Due and Own, by which he hath to him self What he hath, and No one else hath any thing to do with His Right or Inheritance: that gives the Master more then the Servant, the Gentleman more then his Tenant, the Nobleman more than his Fermour, or the rich and wealthy Merchant then his neighbour Mechanick; intitles him to his Land (or Rent) fences in his Inclosure, pales his park, makes a Thief that enters, and takes, and carries away, and enables him to ask, and have, and sue, and obtain, and recover against the most stubborn and unconscionable injustice, Whereby he is so far as he is, Lord and Master of All things. The Law, I say, The Law it self doth this Alone, apportioning thus to every one certainly and justly, to every fellow-Commoner His Own (in how much disproportion of Quantity soever, with the same Equality of Justice,) to one man Delicates, to Another but bread; to One Silks, to Another Frize; to him Robes, to the other scarce Rags: All this doth one and the self same law ministring to each as it listeth, whether a Mite or a Talent, a Garden or a Field, a Palace or a Cotage: *And if Then this Law should fail, this Rule by any device be Made to warp, and this Strong Spring prove now too weak (in its full force by all Authority) to bring in known dues to Some, (who have the same claim with All,) who*

assures that not to *Others also*, who can pretend to expect by no farther or stronger? If this Judge should not be able to make good his sentence, If this bountifull hand should wither, and prove short to reach out allotted proportions to Whomsoever under equall reason of Right now, Who distinguishes the Sinews, or can warrant their Office long to quicken and actuate those fingers must reach to the wealthy *Their plenty and abundance?* Or not rather doubt their weaknes or strength, quickness or deadnes, life and vigour, or lost power and infirmity may have together and to All (as proceeding from the same Cause of hveliness or obstruction) the same Uniformity? This is the *Basis* whereon all is settled, the Rock whereon all is placed, the great Bottom whereon all is imbarqued, that in *England* we call Goods and kept a floating; If any should think himselfe so cunning with his malice (prompted on by his Covetousnes, for it can be nothing else,) that He thinks he can sink a part, boring a hole at that end where his neighbours Goods are laid up, (the servants of publick holy work their wealth and sustenance is treasured: (without further regard to the Community within,) Let him take heed ere long he hear Not the lowd and shrill Complaints (with fearfull Out-cries) of all his fellow perishing Merchants, who are preserved in and by the same, and whose property and safety must all by Consequent be in danger to be lost or gained, sink or swim Together, to satisfie the greedy desires of those that come plainly enough within the compass of [1] St. James his Character, *Ye covet and quarrell, and ask and yet ye have not because ye would consume it on your lusts.* And let great Possessours Chiefly look to themselves, for ————— &c. ————— I was going on to due and nearer application, but the figure *Aposiopesis* lays my hand upon my lip, and forbids to speak meaning well, what may be ill interpreted, and therefore prudently and silently let this inference be left to the working of every ones own Christian and reasonable thoughts. Onely this I cannot but add, That there are seen great disproportions in the World, and some have notable advantage thereby, *The Ground of all which is the Law:* There are very great heaps, injoyed with security, and

and none dares now touch the property of the rich and wealthy in a farthing; If this be touched and removed or violated, the bound is going that keeps All from primitive Community, And Therefore they should think much hereon who Have much to lose; They should love to keep the Fence whole who would not have All Common, & the boldness must be extraordinary of those other who in private condition Dare venture to tamper with the Foundation of all Distances, medling with that in Politicks does as much as the grace of God in Religion making one Man to differ fro another in wh<sup>e</sup>re ever he does differ: For what hast thou thou hast not received hereby? and that gives us all things plentifully and ichly, solely & only to enjoy.

<sup>1 Cor. 4. 7.</sup>  
<sup>2 Tim. 6. 17.</sup>

But now some one May say, These are but Logical Arguments, humane Reasonings, fallible and liable to Mistake; Whereunto I answer as readily, assuredly Even so, and there is no doubt of it: None so far out of the way as he that thinks he cannot err, and incurably too, for as much as this perswasion in his minde is as bad as poysen in his soul, hindring ali possibility of healing his error. If then replied what farther probability, It is not so here, and This is right? Have Others thought the same? Hath any thing been done accordingly? How have the fruit of such perswasions or Actions been exhibited in view and in things existent? I answer, Well enough: And this leads inquiry into two things yet behinde fitly, and to this place reserved, and they are, 1. What the Lawyers have given in as their Opinion upon the former or like Grounds. 2. And what has been Done: What the one have thought, and has been the fruit of the other seen in the World.

And first, Ask the learned in their profession: It uses to be so, and prudence thinks it has had especiall work in such obeyed directions. To the Phyfitian in doubt of a disease; To the Artificer in a point of skill; To the Divine in a Case of Conscience; To the Husbandman or Artist in that their callings or conversations fit them to direct about; Every one of these is wise in his work, as the wise man says, and we use to rely on the Practised and Experienced. Go then to the Student, Ask the Counsellor, Move the Judge, Apply to a whole Jury of Judges, or the Corporation of Learned Men, dispersed through the Land, There is never a one will set his hand.

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hand or his thought to the Contrary, or deny it to This, That *Tytbes are as due to their due Receivers as any thing else to whomsoever it is due*: He cannot go against his own light, He must know This, and he ought and will subscribe and do accordingly. 'Twere strange to finde one of a Kinde singular from all the rest: He were a Monster of his profession that had the protuberance of a strange opinion *excessive and swelling* out of his bosome, different from all other of his sort: And as such they would look upon him at *Westminster*, that should peep out into the world with this new discovery, that *Tytbes are any longer Alms, or a Voluntary Benevolence for the support of Christian truth, not Duty and a Due by strict retributive Justice.* Have they not councelled? Have they not practised? Have they not judged? Do they not Judge, and still commit sentence to execution accordingly? And manage the whole series of their most honourable studies, and imployments Still as upon such a Supposition? Unwilling men have not *Given*, but *Paid*: Could they ever relieve them? They have complained, *Their goods upon this pretence have been taken from them*: Where was their remedy? Their *Neighbovr Bench had Ordered, Appointed, Given, It should be so*: Whence any Comfort! Nay, They, the secular Courts themselves have assisted. For if the Consistory appointed, and the convicted denied to pay, The sentence of Excommunication was Orderly and Leisurely but Certainly backed with the Writ *De Excommunicato Capiendo*, to take him that refused as a Rebellious Son of the Church into safe Custody of the State, as contumacious and refractory to allowed orders, and No relief, but still and more assistance and farther prosecution by whatsoever *Ploydens* and *Littleton* could do, that one sword might help another. Nay, themselves have interposed (some say, Too far; the Statute never meant it) at the first instance, and drove on the Statute of treble damages for Justice to Execution in their Court: And were they not Just even when they were, Judging as the King *Ahabuerus* desired the Queen should be, *Vasthi according to Law?* Esth. 1.15.

But to instance in some particulars. Of which those that offer themselves are too many, therefore I content to take up my

my self with a few: Beginning with that right worshipfull and learned Benefactor even to the Learning of an University, the most deserving of Religion, Vertue, Learning, and all Goodness, Sir *Henry Spelman*. He was not indeed a Lawyer; but More: Himself bewails the mis-guiding of his tender years (1) too soon out of the direct way to graduated and professing in that most excellent knowledge; But he that shall heed the demonstration he gives the world of his Sufficiency in those Nble Studies by his Glossary and sundry other exact pieces extant, will be forced to confess him above even measure for a Professour, and not unworthy to teach some Masters; As having digged down to the foundation of our Fundamentals, and not unworthy to sit in the highest Chair of the Learned. Now he tells us in one piece, (as I remember, for I have not the Book by me,) that although Tythes and other Rights of the Clergy had not been primarily due unto God, by the (immediate) rule of his Word, yet Are they Now His, and separate from us by the voluntary gift and dedication of our ancient Kings and Predecessours: and who shall violate the will of the dead! whose impiety shall dare alter, change, invert, divert the streams of their pious bounty, and heavenly inspired charity, out of those channels their wills set them in, to move toward and end in the advancement of Gods glory! If it be but a Mans Testament, saith Saint *Paul*, who disannulleth or addeth thereto, being once confirmed? and shall not religious endowments be yet more safe, and from violation, being Given Legacies, and having all possible humane confirmation! And in a Treatise published since his death, he is yet more express; 'Tis fully and solely of the Right of Tythes, and (taking the subject at large) He begins, *That God will have a part not onely of our Time, but Goods*: That *Christ released not Levi's part in them*: That *there is something in nature for That duenesse and proportion*: That *they are due by the Ecclesiastical Laws of Councils, by the imprinted Laws of Nature, by the Written Laws of God, by the received Ordinances of Nations*, and lastly, screwing it up to the equall heighth of our proposition to a syllable, *That they are due*

(1) In prefat ad  
Glossar. pa. 1. and  
in his *Treatise of*  
*Tythes*, pa. 161.

Gal. 3. 15.

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*Chap. 27. p. 111  
&c.*

(with us) by the Law of our Land. By what Law? the very Secular, Temporal, All-ruling, All-giving, which settles all men in their possessions and inheritances; and he alledges for it divers of thoe principles which before (as not borrowing of him) we alledged to this purpose: (whence also we hope We have not been mistaken, because we finde his vote consenting and strengthning ours.) As K. Edwards Law, K. Ethelstanes Law, K. Edmonds Law, K. Edgar, Knout, and the Confessour, beside the Conquerours:

*Heu tot !ancitas per plurima secula leges*

*Hauscritis una dies ! hora una ! & perfidus error !*

as he exclaims: Shall one mans days change all so many! and the fruit of best humane wisdome so ripened by time, and grown (as an Oak) by leisurely degrees to greatest Maturity of strength be pulled down by sudden revocation! If the things were lawfully conferred, (as none can doubt but they were so, lawfully,) Then let us consider, (says he) how fearfull a thing it is to pull them from God! to rend them from the Church! to violate the dedications of our Fathers! the Oaths of our Ancesturs! the Decrees of so many Parliaments! and finally, to throw our selves into those horrible curses that the whole Kingdome hath contracted with God (as Nehemiah and the Jews did, Nehem. 10.) should fall upon them if they transgress herein! Say then that Tythes were not Originally due unto God, &c. yet are we in the case of Nehemiah and the Jews, Nehem. 10. 32. They made Statutes by themselves to give every year the third part of a Shekel for the service of the house of God. And (so) our Fathers made Laws among themselves, to give a portion of their Land, and the tenth part of their substance that is, the Parsonages for the service of the house of God. If they were not due before, they are now due: For, When thou vowest a vow unto the Lord thy God, thou shalt not be slack to pay it, for Jehovah thy God will surely require it of thee, and so it should be sin unto thee. Therefore see Act. 5. 4. If the King give a gift of his inheritance to his son, his son shall have it: If he give it to his servant, his servant shall have it, (their times:) If the King then give a gift to his Father, that is, God Almighty, shall not

*Deut 23. 20.*

*Exod 46. 17.*

not he have it? or, the servant to his Master and Maker, shall not he enjoy it? Who hath power to take that from God, which was given unto him (if not by virtue of any command from, yet) according to his word, &c.

Thus far that learned and pious Knight: Which yet I have not transcribed so fully as I meant, because the words of the Laws alledged by him, in the sense we doe, and for proof of the same conclusion, were represented in words at length before upon occasion; And yet thus much too was needful to shew content, that we went not, nor invent of our own, but of the same words make construction to the same purpose, and have the same apprehension of things upon the same grounds he both had and gave: Premises and Conclusion the same from the same; for singularity either of opinion or proof brings always with it some suspition. We see, he saith & here proveth, that beside Canonical, Natural, Moral, and as it seems unto him, Divine Law, our Civil Laws have added whatever of strength they can give to create a Topical and English Political home-right of Dominion & Power: *Jure Sols* as they use to speak, as well as *Jure Poli*, to settle these Dues where they are. The former may have been our Ancestry *Principles and Rules* which guided them at first in settling as they did, (and with these, many things else,) But now we little need to go so far, (unless *ex abundanti*.) for Surplusage of strength; for however it may have been disputable at first of the Natural or Moral right (as of sundry other things, Ministers, Honours, Inheritances &c.) which concerneth also the Indians yet, or other Infidel Nations, in state that ours once was of, *To be converted*, where, nothing publick hath been done or passed for them; Yet as when *Ananias and Sapphira* had given, the state of things was altered, and their Duty or Danger; So here the Partial and Civil having made chains of continual and successive binding Ordinances to hold, retain, and keep these things fast and thus, Now the principles may stand by, the inference being justly made, established and of force . and without further inquiry, the *Stated Made Right* must be here enough, or None have with us any thing.

This worthy and Worshipful Knight (whose degree gave

P p 2 him

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him not so much title to those honouring Epithetes, as his Worth and true Worthiness, as we would call it Worthy-ship, and who honoured his Titles, as much as They Him) was a man singularly Learned, profoundly Judicious, of most tender conscience, and lively, quick zeal and love of his God, and Christ, and that his flock which we call the Church: no way interested, save to his own prejudice, and by his lay condition rendered incapable to reap any fruit of this Harvest, hee here so earnestly strives to defend from spoile, nor like to eat a bit of that bread, he here so zealously defends in behalf of the true owners, (*Memoria justi in benedictionibus;*) yet it pleased God to stir up his heart, and he that touched the Prophet *Ezays* lips, with a coal from the Altar, no doubt touched his heart and quickned and directed his minde to indite, and his pen to write and set down many profound and unanswerable arguments for truth against sacrilegious, kept secret from those that stand alwys in the house of the Lord in the Courts of the house of our God, as the Psalmist speaks, the professed and dedicated servants and Votaries of the Temple; and because uninterested to make him the fitter and more likely to be successful Champion of Justice, Truth, and true Religion, in their outward visible supports, then those whose known interestes would always have taken of and diminished from the worth or effect of their sufficient, or never so well-meant undertakings and performances. Which outward supports let them be stirred when they will, (men may dream and think they prophesie, but) an ordinary Humane eye can in reason probably fore-fee nothing but very soon & too sure the decay of Religion, the fall of the Church (as to outward frame, order, and support,) and Christian piety it self (I speak in humane consideration still) ready to fal flat down to the ground, or degenerate into Natural. God can sustain it miraculously, & feed his servants waiting on the Ministry thereof now, as he did his people in the Wilderness, or the Prophet *Elijah* by a Raven, or yet more miraculously without any meat at all; or perhaps in as equally strange and wonderful way, by the men of this world their voluntary Benevolence: But speak according to inferiour proba-

Ec. 67.

Psal. 135.1.

a Kings 17.6.

probabilities as things depend here on their causes, or in humane expectation, which is to be our *lower rule*, and thus, He that considers the Course of this world, the sleight estimation that most have of the best things, the stony-heartedness of men to part with what they Once Have, the necessity of bread for man to live on, and the unlikeness of enough to come in for this end any other way, Cannot but conclude (the rather, because some Preachers have been reported starved of late, One by very likely information I knew, conformable enough to the times, yea zealous for them,) that there is much cauie to Fear, lest the Light fail with the Candlestick, the Ministry fall with the Means holding it up, the Gospel be a silent word when there is no voice of a Preacher, nor will be Preaching much longer then holdeth out this Maintenance. Those Labourers of the Lords Harvest fixed in their stations are not like to be preserved much longer in Being, Health, Order and Number, then this accustomed food is allowed them which they may Claim as their Own (not being beholding to Others, or Depending, which is always grievous to ingenuous natures,) But as they labour so be sure to live. Plenty and delicacy are not the things stood upon: Religion, though she know how to abound, as well as to want, and how to dispose of superfluity as well any other, yet she cares not or stands not much upon Wine and Cates; Let the Epicures and men of this world hunt after this draugh & sensual contentments whose empty and carnall souls know no other means of contentment or comfort, *whose Belly is thir God, Phil 3. 29. and Glory their shame, minding the Earth, as the Apostle speaks, and whose care is onely to feed, grow fat, and lie down with the Swine,* 'tis much to be doubted also to rise with him: But Being and Comfort are those Blessings which even the Children of God desire to be made partakers of in this world with submission to the will of their Heavenly Father, To have to live of their Own, and not be burdensome but rather helpful to others, their reasonable desire, And that they may finde the Scripture true, (1) *They that sow spiri-* (1) 1 Cor. 9. 11. ;  
*tuall, 'tis no great matter if they reap temporall;* and (2) *Let (2) Gal. 6. 6.*  
*the Catechumene (He that is taught) communicate unto his*  
*Catechift,*

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*Catechist, (or Teacher) (which how can it be done better than in the way of the Tenth of all?) ev mor, in all things necessary, or as 'tis usually rendred in all his Goods.* This is that men *In this world* though not *of this world*, will always stand upon while they live here below in this scratching and scambling world for honest as well as necessary ends; O that mine eyes could spy a way, if that *which Is*, mens greedy parcimony and stubborn persisting in Unjust as well as Covetous desires will have no denial but they will be left at liberty to pull away, How a constant supply should come in (while men have souls,) to support an Army of near (1) ten thousand able Commanders, who should preside and govern (decently, orderly, and as becometh the Ministers of Christ) over so many dispersed Congregations. The slender endowment of many Vicarages not hitherto at all increased, The wretched allowance of little more then some Shepheards wages usuall for Cure of souls, and by the bounty of the Parish seldom or very little augmented, The yet worse way in many other places, where was more liberty of raising a support by voluntary rate and less expectation according to Law or Obligation by it, Do give cause of even Trembling fear to think, when this liberty shall be enlarged to All, and men be bound to pay no more, then what they can be content to allow themselves to be forced to part with, Whether then there will be almoft any discharge of Cure at all, or the weekly sacrifice perhaps altogether cease, if the necessary supply of means for the outward bodily labour, should be suffered to come in in that Experienced scant way, which hath hitherto left the highest and best house in the Parish no better furnished with a Levite to serve (or rather to starve souls) then were Jeroboams Priests heretofore, the lowest of the people? O Christian, if thou be, look upon the Inpropriations (as styled) in generall, Behold there the Image of Pharaohs lean kine in the slender slack allowance usuall, a next to Beggarly Exhibition of what would little more then keep a single simple man alive to Read, where Legall endowment had staled no more, A Faulkners or some good Journey mans entertainment exceeding what was usually allowed by the Reftour who

(1) For, near so  
many diffirent Pa-  
rishes there are in  
Engla d already,  
b esides needful  
Chappels, & farms  
much requireress  
of more by the  
over-grown bulk  
of Divers in sum-  
dry laces since the  
last distribution.

■ King. 13.23.

who received all the Tenth from the people, And yet worse of my knowledge where the free-will-offering of the people of a Parish hath not for all the Kings Reign, nor doth yet raise above half a good Shepheards wages, about sixescore shillings yearly for the Shepheard of souls; And then, if thou have any Bowels of compassion over souls, keep them from earning if thou Canst, If thou have pity or love to Religion or Christian Men, think hereof and judge accordingly. Experience, the Mistres of Fools may at some times perhaps teach wise men more wisdom; Let it at least furnish us with Caution, by what has been to make some estimate what is like to be, What may, or will, or perhaps Must; and to be wary, look back, and Compare where no stated set allowance has been by Dues to be sued for, and then judge. I do not speak absolutely: I am no Prophet or the son of a Prophet, Our foresight of things in their causes is always here but dim and as of Probabilities; The suffering every man to walk in the ways of his own heart, in this matter, and to follow the light of his own eyes, *May tend I confess to not the worst prejudice, or by altering but to snuffe the light that it may burn clearer and to more content of those shall both maintain and use it;* yet no man hath cause to be offended with my jealousie in the things of my God, tenderest care and fear of the worst about his Honour, or that in zeal to the worsh p of his Name I poure out my soul in devout supplication, *God grant it tend not to put the Light clean out!* Heavens vouchsafe this great favour to Earth that *Coverousness triumph not over Religion, and Having away what is thus Covered, lead to and end in worse then Popish even Heathenish darkness!* For this I know, Heathendome (as the word was when it went off,) was here before Tythes were paid, Never effectually expelled but by them (outwardly, the Grace of God concurring:) The fence and Bulwark they have been that have kept out both it and other Errours God knows how many; If the fence be removed, whether the Beasts of the Common will not break in? if the bank be cut, whether naturally there be not like to be a return of former inundations dri-

riden and kept out thereby? is left to reasonable judgement, we can but gues, God onely knows. This by the way : to return.

Our next impartial Council we crave leave to take Master *Selden*, who seems to offer himself in his printed Declarations: Learned Council indeed, and being Lay, and so altogether uninterested for benefit ever will be presumed to speak with the more indifference: and, when truth and the state of things permits, he comes up and fully home, as can be desired. He fluctuates indeed in time as long as any, but settles with the more judgement at last, and as he that chooseth and sifteth his Corn hath lightly better bread then he that takes what comes in his way, or out of the full heap: So bee that first examines, and then judges. Crave leave then to ask his opinion, *Are Tythes justly civilly due?* He hath already declared himself in publick in the hearing of all the world. Take but the sixth part of what he has laid down in his History, and it may be abundantly enough. Or but Secure the Jurisdiction, and That, as has been often said, is sufficient, the rest will follow of it self, for which Cast an eye back to what was said before. Will Possession do, or so much time as may create Prescription? for this also he hath said, and there hath been given from him enough, which may not here procure trouble by tedious repetition. Remember what he said *was Clear Law*, and since *Edw. 1.* time a Parochial Right Universal. It is not more certain that he wrote, then that in way to his design of, An History of What Had been, he lets fall enough for *Now due* and *the Right that is*: which bottome the result of his painfull disquisitions often settles upon. These two are the chief, and their testimony given in upon record, more then publick which goes forth to All, and being in Books deserves that of the Psalm, *Their sound is gone out into all Lands, and their words unto the ends of the world:* Perhaps may bee read and acknowledged in the Indies. Now after these it may be superfluous to adde the other that offer themselves, and in

in no less publick way still, *the Press*, that usually speaks with a thousand voices at once, and is heard, to any distance, the Echo may remaine to all generations ; As, *W. C.* in his Tything Table, printed in the Queenes time, and re-printed often since, 'tis in the hands of all men, and rivels out the generall Subject into many particulars : Doctour Sir , who hath laboured not unprofitably in the same argument : Master  In his view of the Law, par. 3. of Grays Innes His Book is called, The Parsons Law : and Judge  (or *Braeton* the second, for so I would compare and parallel their profound soliditie) in his, Compleat Parson : More there are others, scarce any One man knows how many, and they all contribute their united and uninterested vote and sentence hereto, proving sometimes, but mostly supposing a Right, which is more, though the two former I chiefly rely upon. Ask the next man met, and if he know any thing, I know he must know this, and will I believe give it in Co-attestation with All, Nor can hee approve himselfe an English man that hath brow, (for brains he hath little or none, knowledge either of Discourse or Experience,) that can upon deliberation deny it.

## C H A P. XXXIV.

**I**T remaineth next, Whether any thing hath been Done accordingly? Men have thus interpreted Laws; but their Sayings how many, or confident, or grave soever, though bearded with authority, alter not the *Nature of Things*, The exhibition whereof in Deed and View is that Reall proof men most look upon in the World and more, beyond the strongest Opinion or best interpretation; and What has been then seen the effect or Work of these Word and Book-suppositions? I answer; as much as well can be supposed or imagined; with assurance enough too, even to the disposition and transposition of the tenth part of the wealth and Revenue of the land. For among All sorts of persons that had any thing, in All places, There is never a Parish in the Land, or Person of Cense and Possession, but the experience hereof has been given yearly in His estate, and submission to that power, that from one man to another created Right, according to received and obeyed Law: It was but Ask and Have, Seek and obtain, expect the season when the Course of Nature brought forth things in kinde, and take the tenth as it arose; None did *mutire contra* or resist or but obey. The Issue (as before intimated) was but Commonly either the Bounds, or Certainty of the Parish; If these two were well proved (whereof onely could be doubt) the rest came in of it self, and the force of these grounds of Law as before, so interpreted as now, carried the Tenth fleece, the Tenth Lamb, the Tenth Lock, Heap, or Sheaf, &c. all upon a Supposition All was right, and this as often as the things grew Due and demanded. Nor needed the Plaintiff (that his quality, though he might goe under another name) to cast out for any Law, a Combination of Which, and the whole of a sort, united and deeply founded

was

was always in his behalf (1) supposed : This was put into his Libell, *nam de fure communi & Ecclesiastico, quam de antiqua, laudabili, legitimèq; prescripta consuetudine, jus percipiendi, recipiendi, & habendi omnes & singulæ decimas tam maiores, quam minores mixtas & minutæ infra Parochiam de N. provenientes, crescentes, renovantes, & contingentes, ad Rectorem Rectoria de N. spectat & pertinet, &c.* and this a set way as in the secular form of pleading upon Briefs, which were always the same, like the laws of the Medes and Persians, without alteration ; Nor may we well suppose any error to have crept in, or been admitted or retained Here, in that plea, which was a ventilation or exact discussion of the tenth part of the profits of the Kingdom. There is much both law and Constancy in those set forms, 'tis very hard to suggest or foist in any error to those known inviolable pieces ; to (2) raise or alter a Writ, requires and has had the legislative power of the Kingdom : Of the like certainty, use, evidence and inviolable firm constancy and immutability was (no doubt) the way of transacting things here : If we light upon truth anywhere, we may hope for it in those lines which have been so often handled and reviewed, and which have themselves handled and disposed of so much of every mans estate, as in the whole amounts to that part which is the tenth of every thing. Some of many would have found the fault, if there had been any, nor could the iniquity have remained unespied, in that most men had their eye upon, and suffered by whereas none did Here, Therefore it is very likely to have been good and Right which All as Such have looked upon, and None been able to espy therein Errour or falsity.

Thus to the Cause have we subjoyned the Effect : To the Law before, interpreted now, the use and fruit in disposition of mens estates, Their wealth that dearly beloved of their souls with much patience being suffered to be transposed and change masters by its power, And sentences were to this purpose as usuall as tryals. According whereto followed no

(1) Now toneying the discharging of tythes themselves, & the pleading them at the Common law, & it is to be observed, that they are things of Common right, and doe of Right belong unto the Church. And therefore though it be true, that before the Councell of Laterane, there were no parishes nor parochy priests that could claim them, but a man might give them to certain spiritual person he would, yet since parishes were erected, they are due to the Person except in certain speciall regular Cities or Cities of the primitiue, and therefor when you have a prohibitory for dissenting, of the validity whereof, and when to take place, he is there speaking. You must consider it is a plea in bar against Common Right to a demand of Tythes in chancery or Common

Right, though they be in severall Courts, as by a Release either in Deed or Report in Blades Case, pag. 295.

(2) Stat. of Westm. c. 1, 4, 33, & 41, 13. Edw. I. Stat. of Merchants, c. 1. Stat. of Quo warranto, 30. Edw. I.

doubt execution ; who knows any thing knows this by daily everywhere experience, and as before we might not suppose forms of practised law erroneous and deceitfull, So here, that they should, being such, have found so ready and universall obedience, or that a wrongfull sentence should have intruded to take place, especially siche to generall prejudice ; Draining mens purses of much of every thing, and they (the whole world) so fast asleep, that no suspicion was stirred up of the legerdemain ; Nor so much as any outcry heard of so spreading and universall wrongfull incroachment. Surely no : There was no such thing ; but a Just sentence upon due proceeding : Both *cause and effect, Rule and Order. Law and execution were according to Right* : and as in any other the Kings Courts, these temporal-spiritual things were orderly and legally disposed of and settled Here, by that law, which ordereth, disposeth, setteth, and even Giveth all things.

Upon all which would follow also one thing more, That if all these things be Thus, Not Colours but of substance and reality, If such law have so passed and ought to be obeyed, and has, And to part with be now by vertue thereof Not to Give but Pay, *Debitum Justitiae*, and of Right Ought (to the service of God) not *Debitum Charitatis*, a bequest of love and good Will : Hereby is way made, not onely of bringing home these Dues safe and sure to their Right owners the Just Claimers ; but also of bringing home further all those forceable exhortations to the payment of them in Gospel-dayes, to Gods service, even under those Strong reasons which were heretofore used by the Prophets and wise good men under the Temple & Law ; And with us may be said, *Give and Pay these due Debentures* to the Christian service as wel and upon the same grounds as they heretofore used, & by which they were then urged to be paid. For they required them but as Due, Due to God, (*sc. for his service*) Due by their Law, Sacred in their Polity, and which Immediately came from God: Now although we do not so plead them as strictly (here) due by any divine Law among us given on the Mount, or written with the finger of Gods hand, yet they are by that Law: and Sacred too, and apportioning them to God, that is his service too, which, as before giving them, is ratified and confirmed (as all Just powers and Laws are) by him that dwelleth on the Mount, who approves and sets to his seal to be Just and Good, whatsoever Orders, Ordinances, Laws or devices his people (as so many additionary, explicatory, or By-laws for the good, peace and order of the place where they live, not crossing the Common) shall make for establishing and perpetuating his honour by means of their own created Justice, and so a kinde of Divine, and certain, though

though Mediate and consequentiall way of confirmation they have from the powers above still; At least ground enough to say in the sense of heretofore, (1) Give the Lord his Due With a good eye, and Consecrate thy tythes with gladness; Give (yea Pay) unto the most High according as he hath enriched thee; and as thou hast gotten give with a good eye; that Law which is in a lease his Sacred law hath commanded it: For, (2) All the tythe of the Land, of the seed of the Land, or the fruit of the tree is the LORDS (Now) Holy to the LORD: And, concerning the tythe of the Heard or of the flock, whatsoever passeth under the Rod, it is now holy to the Lord likewise: Therefore (3) thou shalt truly tythe all the increase of thy seed, that the field bringeth forth year by year, and (4) Bring All into the storehouse, and try whether the Windows of heaven shall not be opened for recompence. My Tythe into my Storehouse: for (5) Behold they are given, (It not I have given, I have ratified their gifts who have given them) to the Levites of the New-Testament, for the services they serve in this tabernacle of the Christian Congregation. Moses said, Exod. 22. Decimus & primius non tardabis offerre Dominu, as in the Old Latin: And King Alfred says, Thine Tything-scot. &c. give thou to God, in his translation and imposition of that law upon us, (which our just government, and by consequent Our God approveth:) K. Ethelbert said, K. Offa said, K. Ethelwlfph, K. Edmund, K. Edward said so (both the elder and younger on this and that side the Norman turn) beside other, and it hath been digested, received, approvd obeyed & practised by in our(6) Sacred Common-law, if I may so speak, that they Must and ought: And so We as They require Them, in the words of Scripture, the same Words as They, and to the same generall end, upon the same ground of a kinde of English Sacred-Law. Pardon that Epithete, and admit a Justification: As such I look upon and May call all those which being Civil and Common as Sancti-  
ons even with us have a touch as it were and Derivation from God, and so All Sanctity or Sacrednes cannot simply be abstracted from them. As the Wise, and in his memory so much reverenced Chancellor Fortescue averred and justified

(1) Exclus. 35. 10.

(2) Levit. 27. 30.

(3) Deut. 14. 22.

(4) Mal. 3. 8.

(5) Num. 18. 20.

(6) Leges Sacra-  
tilimæ, qua con-  
stringunt homi-  
num vitas, intel-  
ligi ab omnibus  
debent. Cod. de-  
leg. I. 9.

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to our young Edw. 4. King Henry the sixth his Son in his banishment, making every Lawyer a kinde of Priest, and so far forth officiating in his Cure, as he duely and reverendly gives forth the things of this Sacred Justice and Law. It has place where he is counselling him not to regard Military exercises alone, but to enrich his minde with noblest endowments of knowledg and piety, setting for his pattern, The Prince of Israel, who was (1) councelled to keep always a copy of the Holy law by him, and to read therein all the dayes of his life, that he might learn to fear JEHOVAH his God, &c. Yea, (2)

(1) Deut. 17.28.

19.

(2) Hec ut audiuit Princeps, erecto in senem vulnus, sic locutus est. Scis, Cancellarius, quid liber Deuter. quem tu committas, sacra si prima volumen est; leges quoque & cetera monis in ea conscripta etiam sacra sunt, ad dominica & per Mosen promulgata: cuare eas legere sancta contemplatione dulcedo est. Sed lex ad eam sciemiam me invitas, h. manna est, ab omnia

bus edita, & reactual terrena: quo, licet Mosen ad Deuter. ieiunium Reges Israel astringerent, cum per hoc reges alios, ad confundendum in suis legibus, coroneasse, omnes effigit ratzenem, cum arringue istud non sit eadem causa. At Cancellarius, Scis, &c. Scire igitur te volo, quod non solum Deuter. leges, sed & omnes leges humanae facie sunt, quo lex sub his verbis definitur: Lex est sanctio sancta, jubens honesta, & prohibens contraria: Sanctum enim esse sportes, quod esse sanctum definitum est. Ius etiam describi perhibetur, quod illud est ars boni & aequi, cuius merito quis nos Sacerdotes appellat. Sacerdos enim quasi Sacra dans, vel Sacra docens, per etymologiam dicitur, quia uic dicunt Iura, leges faciat sunt, quo eas ministri facere & docentes, Sacerdotes appellantur. A Deo etiam sunt omnes leges edere, que ab homine promulgantur. Nam, cum dicat Apostolus, quod omni potestate à Domino Deus est, leges ab homine conditas, qui ad hoc à domino recipi potestatem, etiam à Deo constituantur, diciente autore causarum (Aristotele). Quicquid facit causa secunda, facit & causa prima, altiori & nobiliori modo. Quare Iosaphat, &c.

Ex quo buserediris, quod leges, licet humanas, addiscere, est ad discere leges Sacras & editiones Dei, que eorum studium non vacat à dulcedine consolationis Sanctae. Forte de legibus Angl. cap. 2, & 3.

(3) Vid. Gloss. lex est. ad Inst. 1. de Iur. nat. & gent. sect. 4. & Gloss. non faciendorum. ad ff. de legibus Senatusque. lib. 1.

(4) Quomodo leges sancte, videlicet de rerum divisi & qualitat, L9. sect. 3.

fore

fore we are Priests. And all Laws are from [1] God, though published by Man: For whereas [2] the Apostle saith, All Power is from God; The Powers that are, are ordained by Him, Law made by such derived Authority, derives farther, and impresses the stamp of Authority from the first Cause through All, for as much as, Whatsoever is the Cause of a Cause, is also a Cause of the thing Caused. Whence [3] Josaphat to his Judges, Ye do Gods work, Te judge not for Man, but for the Lord. So that Every Law is then Holy, Every Statesman may look upon himself as a kinde of Priest, every Magistrato a [4] kinde of Minister of Holy things, (Their Study gives them such, though their Trade may be unrighteousness) and no word can better fit a dying Patriot then these of Eleazar, 2 Mac. 6. ἵνα τὸν οὐρανὸν καὶ ἀΐδην φέρετε, οὐδὲν αὐτὸν διώσατε, to be ready to die for the sacred and venerable Laws of his Country.

Thus then All Laws are Sacred, as derived from God, and backed with his authority, though made by man, and so Ours, and so that which is of this sort in particular: which occasions fit and full application of those Texts of Scripture in the just import of the words and their full vigour of sense to have Tythes brought in, as thus Scripture now requires (these Acts of State and Right supposed, which also are) and they sin against that Sacred Law, yea a double sacred Law, Mans and Gods, (in Mans or above Mans, having Mans under it,) who do not Pay. Some question hath been hitherto of the [5] Ius divinum, whether now Any such be of force to bring in this Revenue of the Temple among us? and there be that affirm as well as that deny, as they finde light or darkness in the Letter of the Scripture (which, immediately, they rely on) in their apprehensions: But this strife may now be

(1) μὴ διὰ τὸν  
μὲν εὐηγέρ  
τεον, δέ γε οὐ  
διάφανον  
ορθίσσων, εἰπε  
τοῦτο τὸ τὸν  
κατόπιν τοῦ  
αὐτοῦ πατρὸς  
πατρὸς. ff. de  
leg. Senatusq;  
L. 2.  
(2) Rom. 13. 1.  
(3) 2 Chron.  
19. 5. God is  
with you in  
judgement.  
So Exod 18.  
19. Deus  
and Goi will  
be with thee.  
(4) Θεοῖς  
διάνοια δέ  
οὐτις τὸ αἴστα  
δέ. Rom. 13. 4  
Si enim minis-  
ter est. And,  
M nstri Dei  
fuit. ver 6.

to Honour God with their substance, and Scripture hath left us an Example of that particular proportion, which for Moral Considerations hath been thought fittest by him whose wisdom could best judge; Furthermore, seeing that the Church of Christ hath long silence entred into Obligation; It seemeth in these days a Question al-  
together vain and superfluous, whether Tythes be a matter of Divine Right, Because, howsoeuer at the first it might have been thoughts doubtfull, our Lord clearly the same now with theirs, unto whom Sa. Pe. et Jamies spoke, While it was whole, it was whole Thine, when our Tythes might have probably leaved our Own, we had Colonie of liberty to use them as we saw good; But having made them His whose they were, let us be warned by other mens example what it is very ridiculous, to wash or slip that Cain hath on it the mark of God. Hookers Eccles.  
Polit. L. 5. Sec. 79. p. 439.

well.

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well stnted, unless for double strength among us, for as much as in a certain clear, but mediate and consequent way (the Act of Man having given, and the Authority of God above confirming what is done below) that divine print reaches through no doubt in the way hath been shewed, and cannot but stamp somewhat of heavenly and the Supreme Power upon the Acts that have passed of Men, and so for the *Commandments sake*, yea for that is by derivation, approbation and undoubted confirmation the *Divine Commandments sake*, they are now Due and must not but be paid, as in *Israel*. *Rebus sic stantibus*, or as things have passed and now are and remain, they are (I say) unquestionably *Thus due by Divine Right*. For the Magistrate is Gods [1] Minister, Every just Law His Ordinance, *Vox Legis, Vox Dei*, and every syllable and sound thereof quickned with an additional spirit of divine infusion, (according to our Scriptures, and as we have from *Rom. 13.* 1 *Pet. 2.* and other places.) And sith then here the Magistrate and the Law have proclaimed for them, whither they be due as in *Moses to Israel*, by the Text of *Leviticus*, or by virtue of any Gospel, or the Epistle to the *Hebrews*, seems not so much material, at least not necessarily considerable, for as much as though this were considerable at first, yet now they are Here fast enough by what the Magistrate has done for them by his Vicarious power and substitute authority. *The Powers that are still ordained of God*, as was also said before; He sticks not to set to his Seal to what has been orderly past in lower Courts, approving and commanding what they prudently and justly do, and it ought not, for Gos sake, but be obeyed: so that whether the general take hold or no, or universal, that Where ever the Gospel is preached this shall be part of its obedience, and the Labourer is worthy of this hire, by divine Right; We have here a sure word of Righteousnes, enough wherunto we may do well to take heed, as unto a light shining in a dark place, and if Not the General Divine Law, *Decimant Dives sias*, or, *Non tardabis offerre Deo Decimas*, yet the other General is topical, and directly binding in our Meridian and Clime, sc. that we must *Do justice*, That we must [2] Render to every one his Due for the Lords sake:

[1] *Whatsoever*

[1] *Whatsoever is just as well as whatsoever is Pure,* [2] *To Cesar the things that are His, and to God the things that are Gods:* And Thus *The Law of God,* (This Law) is thus brought about as quickning and so confirming *Mans*, and the duty hereby to Us moral, even to every English Christian, because This is sure such and most undoubtedly, [3] *That which is just and right, That O Christian shalt Thou do.* So the thing be brought about, no great matter which way; As if the Arrow hit the Mark little inquiry how it came thither; Now Divine Authority backing (of which there is enough,) and seconding humane Ordinances, The rest is easie, and unless for double strength (as said) we have not so much need to inquire for a Divine Letter, because we arrive at the same point safe and sure in the other way of Humane: for if Man have settled, and God commanded to be paid, He have given, and the Magistrate, who is Gods Vicar, allow and enjoyn payment; Now even for Conscience sake that may not be omitted, And whether the Scripture or Nature say any thing in the Case particularly home, They say enough in establishing humane Ordinances, (which will bring God along with them,) and Man for God must not but pay what Man has settled for Gods Commandment sake. So in this(new) way here is *Divinum, or Divine Right still Mediate and Consequential, but sure and certain, which perhaps may not be in Virginia or New-England, where the Gospel may be yet in full vigour, or in Madagascar, or Japan, if the same holy Rule should there finde obedience;* The Climate alters, and some particular things done *Here,* which (I think,) *There* have nor, and thence indeed *This difference and Our preferment:* And suppose they, (that is either those remote strangers, or our Brethren at home that Rely on Divine Right *in scriptis* or the veriy Letter of the Law,) should lose all with that Letter of Scripture, and their proofs falling short from Text or Reason, they therewith fall short of all proof, yet *in this Our way we keep enough in derivation of Consequence, and by Pre-advantage of a Civil Title granted and settled, we gain also another of another sort, Divine but Mediate, accumulate and lasting, even when the immediate and literal is (in reality or supposition) taken away*

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(1) Phil.4.8.  
(2) Matth.22.31.

(3) Deut.16.20.

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In short, we need not doubt of a *Divine Right, Here, With Us*, while there is a *humane Ordinance prevailing*, and a *Divine inspired* [1] *Apostle speaking from God*, we must *Obey every Ordinance of Man for the Lords sake*: The first of which has had attempt of plentiful proof, submitted to judgement, and of the last no Christian admitteth doubt. Yet speak I not any of this last to evacuate or infirm that or their opinion who go another way to stablish the opinion of Divine Right by their fair and solid Arguments from the Text, as if I would withdraw mens mindes from the love and estimation of their Gold, pretending here is Silver, and then if this fail after a while they are wiped of both, and have to trust to Neither: No, these are *severall*, and this *Another*, but *not a contrary or cross Way pointed to*, they do *not justle* but are *very well and fairly consistent and composeable one with the other*, and this prop of Wood may help, if that pillar of Brads fail (or be misplaced,) This string may hold, if that chance to break, or perverse men will not be held by it; And in this *additional or supplemental way* it may be acceptable also to those who are more strict for the divine Right immediate, which, be it what it will I keep promise of within the *Circle of mine own Sphere*, Be that, or be it not, This I believe is, and this advantage enough hereby if we have it. To conclude, let the things be considered as before alledged from the parts of the Law dispersed, Council interpreting, and (which is most material to Exposition,) the practise and Seen Force of the Law thereby, and we cannot from them I think, but conclude, 1. A certainty of Civil Right, and by that bottom of rooted Law, that gives all things. 2. A probability of Divine Right, mediate and consequential. At least the first, and with much assurance, *Id quod erat demonstrandum.*

C H A P.

## C H A P. XXXIII.



T remains for inference and application to the just conscience, that every sober and well-meaning Honest man quietly and orderly compose himself then to his duty in obedience, and if this burden be duly and fitly laid on, & on Him, to take it up and go away with it as contented, not wrangling or quarrelling to his due shame & abominable sin, as well as manifest injustice & dangerously seditious disturbance, But be satisfied with his own, & give out to others with willingness what is theirs, He acknowledges and must acknowledge, and not His. My Lot may be of the Receiving part; If it be, I may justly expect *mine own*, & require it, & demand it, and unless my Christian perswasion be against going to Law for any thing (which has colour from 1 Cor. 6.1, 6, 7.) if it be denied, as for any other Right, sue for it. Or if my lot be on the paying part here I have both leave and duty, not to [1] murmur or complain, shift or evade, but meekly, gently, and Christianlike do what belongs to me, reckoning my self no Honest man, unless I have thus much Honesty to be Content to give every man his Due, yea not as the Ox or the Slave, merely for fear of the whip, but from forwardness and readines, quickned by the inspiration of my Religion, whatsoever I do (as unto the Lord or unto Men) doing it Heartily and willingly, as knowing I am bound to keep my rank ([2] *επειδης*) not onely for wrath but for Conscience sake. For [3] God loveth a chearfull Giver, and a chearfull Doer, and it is the great commendation of Christian Religion that it makes or leaves none slow or indifferent in any good Duty, but addswings to the

*that I have not run in vain, nor laboured in vain, Phil 3.14, 15, 16. See also 1 Cor 10.10. and Jude ver. 16.  
Sure thou a Goljel sin. (2) Rom 13.1, 5. (3) 1 Cor 6.7.*

Rg 2

weary

(1) *Do all things without murmurings and disputings, that ye may be blameless and harmless, the Sons of God, without rebuke in the midst of a crooked and perverse generation, among whom ye shine as Lights in the world, holding forth (thus) the word of life, that I may have comfort of you in the day of Christ,*

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weary or heavy doubting soul , more readily , effectually , and chearfully to do every thing ought to be done for the Lords sake ? 'Tis said there are some whose Consciences will not give them leave to issue forth these Dues , according to legal Obligation and all just expectation , even as just as any is in the world ; But I ask almost in the same words , whether their Consciences will give them leave to pay their Dues ? A Just Assesment ? Stated Rights ? A Quit Rent , a Fine , a Releif , or any Just Imposition ? Set aside *Leviticus* , *Malachi* the Epistle to the *Hebrews* , yea the whole Bible : This Rent-charge as it were , is so due by Civil Justice ; will they now be Honest Men ? If they answer but Roundly and home to this , I have as much as I desire . Will their Consciences give them leave to pay their Debts ? what is doomed such ? If this be not a Debt to the due Receiver , a yearly profit issuing out of their Lands to anothers use by Law , Nothing is due here in *England* , and for this is the strength of the whole Treatise going before . Thou sayest , *I cannot prove Tythes due by the Law of God* ; I went not about it , but if I can by the Law of Man , this is enough for thee : thou repliest , *Leviticus is abrogated , the Hebrews dark , Abrahams and Jacobs but examples* ; But wilt thou pay a Custome , or Toll , or Tribute , or legal Taxation ? Is a Rent-charge due , or Relief , or Quit-Rent ? By what Obligation soever thou shalt confess There , by the same and of equal strength I will make good my Plea here ; Where art thou now ? Wilt thou pay both or none ? What but English Sacred Law gives the one ? and the same gives the other : Pay or deny , both or neither , the equity is of equal measure , strength , and evidence for both together : O Christian , let not the World deceive thee : Let not the God of this World blinde thine eys : If thy Covetousness hinder not , thy Conscience may well serve thee to pay thy Dues , yea , would constrain thee , that is more then Permit , for true Religion does more then Give leave , Command , and Injоyn men to be Just and Righteous .

Nor let any one say , These are Trifles , far below the height of Heaven : May not a man keep a good Christians Conscience to God without troubling himself with these Levitical Ceremonies ?

imonies? Harken man, This is a part of our Moral Righteousness, as things are Now with Us a part of Necessary Justice; A man can be with Us No more Unrighteous or Unhonest then he can here make light of this part of his legal Duty. Nor let him say, *I have given my name to Heaven, I have weightier things in consideration, Must I interrupt in pull down my higher thoughts from devotion faith and Spirituals to these, which when a Pharisee boasted exact obedience of,* he remained but a Pharisee? O Good Man value things as they are; Thou wilt not neglect Earth I hope in order to Heaven, or suffer thy Religion to leave thee Not Honest or Unjust; Must thou not deal Truly in these lower things before thou art fit to be trusted in higher? Or is Moral Justice ~~as~~ Heathen virtue, meer stranger to the power of Godliness, and Not regarded at all by the God of the Christians? Does not thine own Saviour say, (Believe not me, but believe Him, and believe me but as I do with fidelity and trust dispense the the Truths of, for, and from Him,) that [1] *He that is faithfull in the least is faithfull also in much; He that is unjust in the least is unjust also in much;* If therefore ye have not been faithfull in the Unrighteous Mammon, who will commit to your Trust the True Riches? Nor let any further excuse with the pretence of the Nature of Things, *He hath weaned himself from these lower to better: Faith, hope, praise and prayer, &c. do so take him up that meaner things have less regard justly, He is for the Height of Holiness.* And I will believe him as soon, as that, He hath climbed the Pinnacles of Solomons Temple, who is scarce got up the steps of Solomons Porch, That he that is Unjust can be Holy, or that Good man fitted to be a Citizen of the new Jerusalem, a Free-man of the Kingdom of Heaven, Who wants necessary qualifications to live in an honest, well-governed Commonwealth on Earth. Shall Heaven be furnished out with Dishonest men? or the legal Members of that Citie be Defrauders and Deceivers? Does not the [2] Apostle say, (What can be plainer? Be not deceived, (Some are apt to think so,) That the Unjust, Idolaters, thieves or covetous shall ever Inherit the Kingdom of God. And such were some of you, But ye are now washed,

(1) Luc. 16, 10, 11.

(2) 1 Cor. 6, 9.

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Apoc. 22.15.

Rom. 14.23.

Chap. 1.3.

John 16.9.

2 Sam. 12.4,5.

Luk. 23.42.

Phil. 2. 18,19.

(1) Gen. 42.35.

(2) Luk. 49. 8.

Chap. 22.33.  
Mat. 25. 35. &c.

Act. 26.27.

2 Tim. 1.13.

(or else had no hopes there) but ye are cleansed, but ye are purified, but ye are justified. Without are Dogs and evil Doers. Thou art apt to condemn a Thief or a Robber, the cry of the whole Countrey is against Him, What! He that grows Rich by spoil,takes another Mans Goods! I confess, his crime is something more, but that a part, and his whole sin, and wilt thou take the cross to that of the Apostle, *Blessed is He that condemneth not himself in the thing that he alloweth; Thou that judgest another, Doest Thou the same thing?* We are bid to make us friends with the Mammon of Unrighteousness that when need is, we may finde Everlasting succour: Sure this by Just dealing at lealt, I believe more by unjust or unnecessary Giving. Is not Unrighteousness sin among Christians? or True dealing, to Give every One his own, onely a superfluous part of Goodness? Welfare then Achab and Jndas. That Oppressour had too severe a censure in Nathans Parable for taking away the poor mans Lamb, and the Thief upon the Crois committed a work of supererogation in repenting his theft in the way to his Paradise. Saint Paul needed not have cared for Onesimus debt, nor the sons of Jacob excuse the stealing of the (1) Plate, (if it had been so:) (2) Zacheus stood forth, and out of superstitious piety Gave to the poor, and if I have wronged any, I restore him four-fold. O no, These vile things of the Earth have Heaven at one end, We may make us bags that waxe not old, or lay up treasure in Hel with them as we use or abuse them; Christ will pronounce sentence upon Those Dispensations at the last day, and if we shall be punished for not being mercifull, what farther if we be unjust and injurious! Is the Word our Rule! Brother Christian, Believest thou the Scriptures? If thou do, stand fast to thy ground, Holdfast the form of sound words as they were delivered and thou didst receive them, Make good thy faith also in thy works seen before men, &c let thy life be a justification of thy belief, a counterpart or exemplification of Thy book of Religion. Be assured of this, there is not held forth anywhere in the world a better picture of An honest just man then in those sacred leaves is described and painted out to the life, Which every believer is bound to be by his Religion; Obedi-

Obedience or Exhibition of himself Such must render him (the Childe of God) such a Just Dealer therewith, And thy necessary conformity to that Law shall make thee *A Pattern to all the world for Heathen Honesty.* This is a part of that *metamorphosis* or *Transformation* in difference from that Conformity to the unjust sinful world before, *Rom. 12. 2.* Dress thy self by this glas, and thou wilt not count thy self ready without this habit, Adorn thy self by these directions, and thou must put on this Moral qualification, ('Tis a part of the putting on the Lord Jesns Christ, *Rom. 13. ult.*) nay, shine bright in it, *abounding in this work of the Lord,* or thou art <sup>1 Cor. 15. 52.</sup> no warrantable Christian.

Shall this be now disputed or doubted? Shall I flain the reputation of Christian Doctrine by this that it has not as clear as day, *that every Proselyte thereof must give every man his due?* or, it may leave me as wilde and conscience-less as a Thieving Tartar or wilde Arabian that takes what he can get, and parts not with what he can keep? I may not sit down with, *Being just only,* for the power of my faith brings about and should bring in all parts of *Civil Justice* by a Stronger Spring then is to be found again in the world, I must doe Right for *Conscience sake,* I must do No Wrong for fear of Heaven seeing me, (*how should I do this Evil, and sin against God?* as Joseph,) I must not take or withhold, or retain, or not give out what belongs to another *sub pena ignis gehenne* under the most intolerable penalty of assured and believed Hel fire. Come home yet more near, we pretend to our age of Light: Have we heard so many Sermons, waited upon God so long in his Ordinances, Sanctified every returne of his holy Sabbath, Wrestled with him as Jacob in daily long Prayers, set aside so many whole speciall days for Fasting and Humiliation to seek the Lord while he may be found, and call upon him while he is not utterly gone to the Indians, Tartars, or other Nations, that yet know not God, and shall we arrive at the last with all this pains at this point of perfection, that we are now come to doubt whether wee may do right or wrong! whether we may equal the injustice of *Enterig the field of the fatherless, whose revenger is Mighty!*

*Gen. 39. 9.*

*Prov. 23. 10. And  
Therewith c. mors  
what before pa.  
27. & pa. 244.*

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*Mighty!* whether we may not invade, covet, take, hold, or withhold, what has been shewed to belong in Right to another ! If it Do, we will yet have it, and hold it, and not part with it, though (if we believe our Bible,) we know we shall be burned in the soul for it, with a coal of *Ignis fortis*, or rather of *Ignis inextinguisibilis*, that *fire of Hell will never be quenched* ! Do we continue to boast of light from Heaven, the Sun shining clear in the Firmament by the allowed use of Scripture, and the bright beams thereof dispersing and darting their full power daily from the Pulpit such a long day as has outlasted the years of many generations, with so many repeated impressions and dispersions of Numberless Numbers of English Bibles, that it hath been an amazement to some that live neare the well-head whence those waters of the Sanctuary flow, and others conjecture the Enemy buyes them up to burn them in private, sith in publick and for Heretical yet he cannot, And shall the English fruit of all this promising seed time be, our doubts come out serioufly in any of the scandalous ways before, or our carnall hearts have admitted no operation to obedience in such clear and undoubted evident matters, But alas, some part of our Neighbours Due inclosure we would take in and hedge to our own, though we make bold with the hedge of Gods Law for it, His corruptible wealth we covet, His silver or gold we take or withhold, (or what has equall right) His Mammon of unrighteousness, as we account, we *suntum non sacrilegiously* seize upon for our selves, and to prevent his idolatry, we put it into a private place, as it were, that we Our selves may worship it ! We love it, we desire it, we keep it, we cherish it, we will not part with it, though God himself become intercessor for Justice, and stand as it were at the Magistrates elbow, backing his command with a higher accessory Authority, *Nec vox hominem sonat*, there is somewhat more then meerly humane in that loud and publicke voice of *The allowed Law*, at leat *Aliquid Divini*, which God uses to impart to that substitution of himself and Vicarious power, which *whoso resisteth, resisteth the Ordinance of God, and they that do so resist, must look to receive to themselves*

selves damnation. What shall we say to this, if the enemy should lay this to our Charge ? (as be we sure God will be our enemy, and put it home severely unless we repent and amend.) Is this a part of our Gospel-righteousnes ! a fruit of our holy Religion ! that will consist with our Justification by Faith , and shall we furnish him with arguments or sophismes enough against that opinion or the consequents thereof by Such a Life ! *While we have the Light*, doe we thus *walk in the Light*? giving him occasion to say , These are the works we see they do, (*By their frnits shall ye know them,*) We know it of them, for we see it : This is the Harvest has been long a growing, and the fruit they reap among themselves of their many years use in freedome of their English Bible. Now the Lord rebuke thee Satan , that thus sitteth between the lips of seduced benighted men,to blaspheme the ways of the living God, or the courses or things they do not or will not understand, not distinguishing between Heavens blessing and Mans abuse , the fruit of Gods Ordinance and Mans Corruption ; and the same God give his servants grace to carry themselves so inoffensively in word and deed, that no merit of their misdemeanour may hereafter give occasion of such reproach, but behaving themselves in all things as the servants of God , and having a good conscience, whereas men speak evill of them, as of evill doers, They may be ashamed that falsly accuse their good conversation in Christ; having also honest conversation among the Nations of the world, that they may by geod works they see Done , glorifie God in the day of visitation. This sure, the English Bible is a rule good enough of all righteousness , profitable for doctrine, reproof, correction, instruction, that the Man of God may be perfect;the light thereof shines from above and guides thereco, and the end of its obedience undoubtedly everlasting life. Which blessed Book sith so lighted on again, let us a little sit still to turn the leaves thereof onely, it may fit our close to end with God, perhaps we may there meet with some Angel of His in the way, with his sword ready drawn in his hand to stop our Career in stubbornest resolution to go on in the ways of our own heart ; I will suppose clear what proved

John 13:35.

Mat 7:16.

Chap. 1.12.

2 Tim 3:16, 17.

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that the Ministry has right, (as things stand) right, and their spoliation is wrong; and then O brother Christian, Go along with me, and see what thou wilt say to thine own believed, received, inspired, and that thy self takest for Gospel ((1) Gods-spel,) thy reverenced Divine Oracles.

And first, doth not that Heavenly Law forbid generally All  
 (2) Iniquity, (3) Oppression, (4) Theft, (5) Fraud, (6) Injury,  
 (7) Robbery, (8) Surreption, Extortion; and that (9) No man go beyond and defraud his brother in any (worldly) thing, for God is of all such things the Revenger most severe, as is everywhere said and testified! Does not one of the Tenne Commandements (which children learn in their Catechismes) appoint, Thou shalt not take what is anothers, *Thou shalt not steal*. And mayest thou then pervert, suppress, withhold, detain, and keep to thy benefit what belongs to another, and tends to his impoverishment as well as stealing, perhaps to his starving, certainly to the Wronging both of himself and family? Is this no sin in thy Christian judgement? — Doth not another of the same Laws say, Thou shalt not Covet? What? thy Neighbours Hou'e, Wife, Servant, Ox, Ass; and that All? Is it not as well his Sheaf, Lamb, Flice, Apple, or Egge? for the reason is the same of both: Or, doest thou think God will be so pinned up in his holy and just intentions against All wrong to some straitening interpretations of thine, as may leave Thee loop-holes open, evasions or shelter for in any thing thy wretched Covetousnes? Be not Deceived, God is not mocked; To covet is the sin, not This or That, 'Tis the injurious intent not greatness or kinde of the object of that injury is forbidden; And to make all sure, the close windes up all in the largest and most comprehensive Universality, Not this, nor that, but, *Nor Any thing that is thy Neighbours*. Look upon them again: These are two of Moses Commandements, of Gods Laws, ('tis much in so small an Enchiridion or Summary of duty, the same should  
 (1) See R. Versteeghs  
 gan compounds  
 and deserves that  
 word: as if it were  
 God-spell Spell  
 & a Mystical  
 Speech, or an O-  
 racle, Ausig. pa.  
 223.  
 (2) Exo. 29. 5.  
 Ex. 5. 5. — 24. 3  
 — 36. 2. — 37  
 1 — 66. 18.  
 Eccles. 3. 16. Ex. 5.  
 18. — 57. 17.  
 Matt. 17. 23.  
 2. Tim. 2. 19.  
 Tit. 2. 14.  
 (3) Exod. 22. 21.  
 — 23. 9. Psal. 12.  
 5. Prov. 14. 21.  
 — 22. 16.  
 28. 3. Ier. 7. 6.  
 Ezek. 22. 7  
 Amos 4. 1. Mich.  
 2. 2. Z. char. 7. 10  
 Iam. 2. 6.  
 (4) Exod. 20. 17.  
 Lev. 19. 11. Deu.  
 5. 19 Pro. 30. 9.  
 Ier. 7. 9. Hos. 4. 2.  
 Math. 15. 19.  
 — 19. 8 Mat.  
 20. 19 Luk. 18.  
 20. Rom. 2. 12.  
 Chap. 13. 9 Eph.  
 4. 28 Rev. 9. 24.  
 (5) Lev. 19. 13.  
 2 Sam. 22. 3. 4.  
 Mar. 10. 19.  
 1 Cor. 5. 2. 2 Cor.  
 7. 2 Iam. 5. 4.  
 (6) Iob. 19. 7.  
 Ier. 22. 3. 13.  
 1 Cor. 6. 8 Col.  
 3. 25.  
 (7) Lev. 19. 13.  
 Psa. 119. 61. Pro.  
 31. 7. — 22. 22.  
 Will a man rob God? yet ye have robbed me. But ye say, Wherein have we robbed thee? In Tithes and Offerings. Ye are cursed with a Curse, for ye have robbery me, this whole Nation. Mal. 3. 8, 9.  
 (8) Exod. 22. 12. Matth. 23. 25. 1 Cor. 10. 11. — 6. 9.  
 (9) 1 Thess. 4. 5.

finde a double place by prohibition and repetition) engraven on Tables of Stone, but a transcript from the bosome at first (a true Ecypion of that Original,) of which our Redeemer and Law-giver, says, *Heaven and Earth may pass but these shall not*, and which thou art with equall strictnes bound to keep, as that, *Thou shalt not ly, Thou shalt not blaspheme, Thou shalt not murther, Thou shalt not commit adultery.* Wilt thou not These? Darest thou Those? Mayest thou not murther? Wouldest thou Cover? Wilt thou not Ly, and yet Stealest? Or, *Thou that abhorrest Idols, committest Thou Sarcilidge?* *Thou that boastest of the Law, through breaking the Law dishonourest thou God,* as well as disgracest thy self, as it is written, *The Name of God is blasphemed among the Gentiles thus.* As if any of them shall see us breaking our own Law, transgres our Gods Commandments, trample upon his Precepts, and make no care of the revelations of his Holy Will, not half so much as of an Ordinance of Parliament, Will they not blaspheme, traduce, rail, revile, nay, *mal dicere,* Even Curse and profane our God, that has such untowardly disobedient servants! Will they think him a God! or think we Think him Such, if we thus misbehave our selves toward him! Doth not Saint James say, *He that breaketh the Law in One point is guilty of All?* and upon this account, because *He that faith, Do not commit adultery, faith also, Do not Kill,* (or Steal, or Cover,) (the image of Authority defaced is the same) and doest Thou break Two and hopest to be innocent? Never justifie thy self that thou sweathest not, if thou lyest: Or, thou speakest truth in Civill matter, if thou blaspheme: Or, thou dost not kill, if thou steal or covet. He that defaces the image of that authority shining from God upon All the Law that procures its Reverence, it is not far from his accounting any part a Common word, forasmuch as the same boldnes that hath removed respect from any part, will by like occasion or temptation take off what is no better fastened nor can be any where: He that dares venture on the Chalice, needs not or will not scruple at taking the Carpet, or Bible, or Pulpit-cloth. 'Tis not a broken collection, but a full and even Decalogue, All are equal-

Matth. 5.18.

Rom. 1.22, 23, 24

Iam. 2.10, 11.

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ly Gods Commands, and backed with his authority engraven and shining in the face of every one, As was said, *Heaven and Earth may pass away, but none of these shall pass.* It is God thou must answer not *Man* for neglect and transgression here, Whose Law thou hast broken, Not but more then Whom in Temporals thou hast injured and Wronged. *In the day when God shall judge the world by Jesus Christ, remember then thou hast been told Both, both that He that breaketh the Law in one point, is guilty of All, and He who wrongs Here, breaks it in two, in Coveting and Taking.*

*Heed next what Thy Saviour faith, and this is at least Gospel-Law; Except your righteousness shall exceed (faith He) (Yours, Ours, Anies, that is his Disciple) the righteousness of the Scribes and Pharisees, ye shall not enter into my Kingdome of Heaven:* Now what was Their Righteousness? They paid dues Duely: Questionless they did so, else they had not been *Themselves*, that is, *Righteons*. And for this Particular, by the Providence of God it is so come to pass, that we have repeated double assurance, and from Christs own words again, what was their Righteousnes This Way. First, in his Perionating a Proud Boaster amongst them, that *He paid Tythes of all he possessed*. Which if He had not, the supposition had been an untruth, the Man made to speak nothing to the purpose, Nor had he been brought in truly Commending, but indeed Belying himself, That hee should have done that he did not. Next in that Comparative exprobation, where we have that Exactnesse that *they Paid All to the least, They left none out to very Mixt Annis and Cummin*, which our Saviour says, *They Ought (So it was their Righteousness) to have done, and yet not have left Justice and Mercy undone.* So that no doubt can be but they Paid, they paid duly, they paid of All, and this was *Their Righteousness*; and yet Christ to His Disciples, unless yours shall both Equall and Exceed *Theirs and This*, ye must not look to come within my Kingdome. Nor let any one observe here Duty on their part, They were bound: True they were so, but are we altogether Free? Have we not a Rule of Righteousnes, in some sort as strictly binding as *Theirs*, to make obedience *duty*, not performance *Supererogation*? and we

we as well as they are required not to give but pay? What else are those Laws before alledged many, and yet of force? Are they not All so many rules of Doing, or directing right forward in what way we must go, or we go amiss; and so by consequent our Conformity to them, our being Ruled by them must bring home the imputation to us of Going right forward or amiss, in the way of Righteousness or Unrighteousness, that We may be Just or Unjust as they?

We have no Levitical Law perhaps indeed, no *Ius Divinum*, (at least not within my circle or which I insist on, though I forsake it not, much less disclaim or oppose it;) But we have yet without that enough of our own, and to binde fast enough, a Rule, a Law Sacred, in force, and binding, as hath been shewed, and whereto we ought to take heed as that which in some regard was parallel with Saint Peters *sure word of Prophecie*, and is our light and rule to guide us through the darknes and uncertainty of this world: the transgression whereof is also penall and with us sinfull too (for every disorderly liver is likewise a Sinner to God,) and it Must have the imputation of Righteousness or Unrighteousness, as We neglect or observe Here this Sacred, National, English Rule of our Doings. Nought else is the ground of Property, of Any property, that renders theft possible, or *wrong* the Relative to *Right*; This is the boundary of Fields and Vineyards, cuts out to All their Lordships and Inheritances; and to obey or disobey, break or keep This, makes us as Culpable or Just, Righteous or Unrighteous, as by observing or transgressing his Judicall Law the Hebrew could have been in Israel. No question but we have Law the Rule of Righteousness, as bin ding to us as the Hebrews in their Politie; we may be as Righteous as they, and yet if we be not more, we fall short of our High hopes; for verily (says Christ) unless your Righteousness (that are my Disciples) shall exceed that (parallel) of the Pharisees, ye shall never enter the Kingdom of God.

Or, likest thou better another Rule of thy Saviour? It hath in it as much of wisdome and equity for civill Commerce as I believe is to be found in so many words in the world again. Old Tobit had given it in the Negative before,

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Tobit 4. 15.

Math. 7. 12.

Luk. 6. 31.

*no other what thy self hateſt.* But Christ changed it to the Affirmative, Therefore All things, whatſoever ye would that Men ſhould do unto you, even ſo do ye unto them, for this is both (Text and Exposition,) Law and Prophets. A moſt indifferent Rule, equall restriction, which nature ſuggests, Reason approves, Religion inforces, and All Nations, Perſuasions and Men, will I believe ſay Amen to the Equity of: Thine own Saviour has inrolled it into the Sacred Tables of his Law too, the ſum of his Moral Pandects, a ſhort but full Declaration of needfull Duty, and doeft thou reſolve to o- bey, or refufe? If to obey, Ask thy ſelf, Whether Thou wouldſt be content another ſhould thruſt thee out of thy Right- full Right? If thou hadſt a livelihood to direct and minister in Gods ſervice, or but to ſerve thy ſelf eating and drinking, Wouldſt Thou imbrace it as acceptable good dealing (any o- therwife, then as thou wouldſt submit to perſecution) to be turned out into the High-ways, and Hedges, to get what thou couldſt finde in the Foreſt, imbracing the Hills for a shelter, and the Rocks for a covering? If thou wert in present by due and honest forms of Law inducted and poſſeſſed A. B. Rector Eccleſia Parochialis de C. and ſo tam de Jure Com- muni & Eccleſiaſtico, quam de antiqua, laudabili, legitimeque preſcripta conſuetudine ius perciplendi, recipiendi, & habendi omnes & ſingulas Decimis tam maiores quam mi- nores mixtas & minutias inſra Parochiam de C. proveni- entes, crescentes, renovantes, & contingentes, diſ of right belong unto thee, (as was before in the Libel, and if proved carried the Tenth,) Wouldſt thou, diſcharging thy duty, and carrying thy ſelf according to Law for what thou receiueſt by Law, be willing thy Neighbour ſhould deprive thee of That Own? and having right to receive the Tenth by the ſame title He retains his Nine, and would count him a Thief ſhould take any away, Think well of it that the great Fiſh ſhould eat up the little one to make his paſch ſwell, the Nine ſhould devoure thy Tenth, and thou be turned out of the Sweet and Safe of thy Property to a good allowance, thou haſt no reaſon to doubt or fear, thy good Neighbours will afford (for the labourer is worthy of his hire) in Charity and Equity?

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Equity? Some Overseers Careful care shall see thy bowels fed, thy nakedness covered, thy needs supplyed, thy poverty relieved, thy whole family sustained? Put thy self in case of his person Now under doubt of being brought to this state by thee, Deal impartially between God and thy soul, satisfy thine own thoughts in the proposition and resolution, and if Thou couldst accept, perhaps thy Brother *May*: If Thou Wouldst be so done to, thou mayst the rather expect it of Him: *Petimusque datusque vicissim*, What thou couldst be content to undergo, thou mayst with more reason impose to have suffered. But if Thou abhorrest the inconveniences foreseen in this way, Thy Nature ( regenerate or unregenerate, sanctified or profane) hate the lowness or vileness if not baseness that must be consequent upon such an injury (when thou shouldest not have left what thou couldst call Thine Own,) Thou wouldst not by choice part with thy Right any more then suffer an Extortioner to deprive thee of that thou hast, or the stranger to spoil thy labour; Nay, Thou wouldst defend thy self as against a foraigner, a Spanyard, an Indian, or a Thief; Then think what thou wouldst put up n another, State thine own Case in anothers person, as Nathan taught David to see his Sin in the supposition of his poor Neighbour, Invade not thy brother, Put not *Him* besides his Right, Enter not His Possession, Disturb not His property: Allow *Him* the Comfort and Assurance of his *His Own*, which thou wouldst rather spend to the utmost farthing, if not Dy, rather then suffer thy self to be put out of, to stand to the Courtesie of Supplied with any Charitable allowance. Good Christian, *Do as thou wouldst be done unto, walk by thy Rule, Live as thou Beliest*, or shelter not thy self under Profession with those of Whom thou art not. Thou hast no reason to further or put upon one, what should not upon another, to force on his acceptance what another would decline, or upon thy ne ghbour what mainly Thou declinest Thy Self: Thou mayest think I have the same affections, desires, needs, necessities, the whole body of humanity and humane frailties belonging thereto to be supplied or yeelded to that thou hast; The same infirmities, disease, emptiness, nakedness, to be fed, clothed, relieved,

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Tobit 4.15.

Iam. 4.22.

Rom. 2.13.

Iam. 2.14.

Ver. 21.

Ver. 26.

Ecclius. 34.21.

ved, and in all regards worthy consideration as and in the way thou requirest, If Thou wouldst not trust to Nothing, if Thy self wouldst not be turned to the shame and misery of penniles bench, If Thy Love of this world consisting well enough with the Love of God would not be outed of Plenty and Wealth, stripped of property and left to uncertainty, *& mortis, undiri ministris,* Be but as just and reasonable as old Tobit desired his Son, *Do to None* (*undiri*, No not to One) *what thou thy self hastest.* Whatsoever thou professeſt, or receiveſt, or believest, Be a *Doer of the Word*, not a Knower onely, *lest thou deceive thy self:* for *Not These shall be justified before God, but Those;* And, *What doth it profit a Man that he say He hath faith, and hath not works, shall that faith Save?* *Was not Abraham our Father justified by Works, when he offered his Son on the Altar?* Whence we see, *by Works was his faith made perfect:* And *as the Body without the Spirit is dead, so Faith without Works is dead also.* I urge an Apostles words onely in His meaning, and that must sure imply Heterodox in opinion from none that is in Religion truly Christian. Proceed: Is there any such Thing as *The fear of God!* Does any Text of the Old or New Testament mention it clearly to duty? Dost thou Believe it? and that thou hast it, or oughtest to have it? and Canſt thou then take or detain that which belongs to another? or lay hold, or keep hold of thy Neighbours Goods? Do not the Principles of thy Religion improve and heighten the in-bred persuasions of Nature, Teaching, and assuring thee first, That this is Wrong, yea *ā mala et so ā vicia* Transgression and Sin, and dareſt thou Then do it, when thy Judge looketh on! pretend to fear God, and yet do what he Hates, and yet thou fearest him, and yet thou art confident to disobey him! Or, if thy filiall awfull fear be not yet awakened, let me Knock louder with that Thundring threat of thy Saviour, Luk. 12. 4,5. *And I say unto you my friends, Be not afraid of them that kill the body, and after that have no more that they can do.* But I will forewarn you whom you shall fear: Fear him, which after he hath killed, hath power to cast into Hell, yea, *I say unto you, Fear him.*

Did

Did not *Zacheus*, Christ his host, come in with his injuries in his hand, and before he makes any question of his *Salvation*, openly professeth his *Restitution*? Behold, Lord, (1) saith he, *the half of my goods I give to the poor, and if I have taken any thing by false accusation, I restore him fourfold.* Then Jesus said unto him (Comfortably,) Then and not before, *This day is salvation come to thy house.* This (whether stranger or home-born,) demonstrated him to be one of the *Sons of Abraham.* This is The way back by weeping cross: In the fore-Right of Injury no end probably foreseen but in Hell. He that Repents, must Amend: *Hee that Amends, will Restore:* For while the injury remains, is no alteration, and without alteration is no to better state-restitution. In the Scripture still, Does not the Old and New Testament require and joyn to call for Justice, Truth, Fidelity, Honesty? That which is (2) *Just and Right shalt thou do,* and (3) *whatsoever is Just,* as well as *whatsoever is Holy:* and (4) *Provide things honest in the sight of Man* as well as God; And sure the world counts this Honest, to give every one His own, the very Syllables of Rom. 13. 7. Render therefore to All their Dues, whether Tribute, Custome, Fear, or Honour: And Owe Nothing, but to Love. Or , if we doe not, *The wrath of God is revealed from Heaven* (even to true Believers,) against all ungodliness and unrighteousness of men, who hold if it be the Truth, in iniquity. Which, *Iniqui Regnum Dei non possidebunt,* 1 Cor. 6.9: and *Know ye not that it is so,* It is *Postulatum*, a thing grounded among Christians, and with Caution, Be not deceived: (Some may tell you otherwise;) The unrighteous, and who are They? *Fornicators, Idolaters, Adulterers, ἀπωκοῖται,* unfit to be Englished, (good company ! and with them) nor *Thieves, nor Covetous, nor Railers, nor Extortioners,* a good part of them those that meddle with other mens goods whether by force or fraud, in deed or desire, subtraction or detention, violent Extortion or clancular Surreption, the sin, because the wrong, is the same, and Be not deceived, Do ye not know that *These shall not Inherit Gods Kingdome!* Should not the Kingdome of his sanctified

(1) Luk.19. 8.9.  
Discimus ab ex<sup>e</sup>  
emplo quid faci-  
endum sit iis quos  
peccatorum pe-  
nitent. Primum  
enim quatenus  
sicut potest, resar-  
cienda sunt dam-  
na alii per vim  
aut dolum filata,  
quod ipsa natura  
dictat: Neque  
enim peccare  
desire qui alieni  
receder. Grot.  
loc. pa 789.  
Peccatum non di-  
mitetur nisi resti-  
tuatur ablatum,  
Reg. Iur. Canon. 4.  
& Peccati venia  
non datur nisi  
correpta Reg. 5.  
(2) Deut. 16. 20.  
(3) Phil. 4. 5.  
(4) Rom. 12. 17.  
Chap. 1.18.

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stified and just Congregation, (his Church,) Here, but be cast out by Excommunication with profane Heathens, but shall not his holy and glorious Church of the first-born hereafter, where the imputation of moral Righteousnes shall be the lowest qualification, The holiness of Saints shall be those white and shining glorious Robes without which [1] none shall be admitted to that Bride-chamber. Indeed such were some of you sometimes ; but ye were washed (in Baptism) sanctified (from the first uncleanness) justified (from the other unrighteousness) in the Name of Christ, and by the (searching) Spirit of our God, and so are now a [2] pure Church not having spot or wrinkle or any such thing, but walking [3] circumspectly (as you exactly, precisely,) [4] avoiding the very appearance of Evil, and [5] hating the garment that is but spotted with the flesh.

(1) *Fedor Paues*  
with wife and  
two LINES &  
sons which he  
one died for the  
Lord. *Act. 12. 14.*  
*Blessed are the*  
*Pure in heart, for*  
*they shall have the*  
*rewards same.*  
*Math. 5. 8.*  
(2) *Ephes. 5. 12.*  
(3) *ver. 15.*  
(4) *1 Thess. 5. 22.*  
Ab omni peccate  
mali.  
(5) *Jud. ver. 23.*

(6) *Mauth. 9. 13.*  
chap. 12. 7.  
(7) *Holca 6. 6.*

*Micah 6. 6, 7, 8.*

Besides, we Know Love is the fulfilling of the Law ; the summe of the Christians Law ; The first, second, and third thing required, All is briefly comprehended in it, and can this Confit with wrong ? Do I love my neighbour when I injure him, when I oppress him, and will not give him mine own, nor will not give him His own ? Is this Justice ? far below Love ! Is not Mercy and Pity a strong piece of humane good Nature ? Compassion to one that needs (much more to one that hath Right) the top pinnacle of Christianity ? I Will have Mercy and not Sacrifice, says [6] Christ [7] from the Law, and my Disciples shall be kept alive rather then the Sabbath sanctified : And do these things Confit with Wolvish Cruelty and wrong ? to spoile a man and his inheritance ? to Rob a man of his Right , or not to give him his Right ? Wherewith shall I come before the Lord, saith the Prophet, and bow my self before the High God ? Shall I come before him with burnt-offerings and calves of a year old ? Will the Lord be pleased with thousands of Rams ? or ten thousands of Rivers of Oyl ? My first-born for my transgression ? the fruit of my body for the sin of my soul ? No : He hath not wed thee, O man, what is Good, and what deth Jehovah require, but to do Justly, and to love MERCY, and to walk humbly with thy God ? So in another Prophet, To what purpose is the multitude of sacrifices ?

offerings ? I am full of the burnt-offerings of Rams, and the fat of fed beasts. Bring no more vain Oblations : Incense is an abomination before me : your new Moons and Sabbaths, (All these God himself commanded) the calling of Assemblies I cannot away with, &c. But what then ? Wash you and make you clean : Put away your evil doings, Seek judgement, Relieve the oppressed, &c. and then come and let us reason together. And least any should think these are Old Testament Duties, S. James has left Pure Religion to consist in Such things, chap. 1.27. What ! has the meek Gospel brought in Cruelty and hard-heartedness ? Does the Christian Law allow us to be unmercifull, unjust, unrighteous, fierce, savage, barbarous, and no Religion or Irreligion in the dispensation of wordly Goods or converstant about them, as in oppression, fraud, injury, putting men out of their own, &c. that a Man may be a Lion, a Christian, a Tyger, and a Vulture all together ? preying upon what he can catch of his neighbours, and holding it, without any bowels of compassion ? Is this to follow the Lamb (of God, that taketh away the sins of the World) whithersoever he goeth ? What saith S. Peter, Be pitifull, be courteous, rendering to none Evil though for Evil ? What said S. Paul, Put on therefore as the Elect of God, (Holy and beloved Brethren) bowels of mercies, kindness, humbleness, meekness, &c. What saith both their Master, Be mercifull as your heavenly is mercifull ? Is this agreeable hereto to oppress and undo without cause ? To turn our Fellows out of those Rights they have as good Titles to as our selves to any thing ? to contribute our small and singe power to undoing of Thousands ? yea, thousands of Families, of Choicest Wits, best Education, greatest Hopes, highest Trust, that have mens Souls committed to them but They, their Persons and Estates should be left to spoil, themselves bequeathed to the Beggars inheritance the Wallet and the Scrip, to live of what is Given them ; and God knows, Charity is so cold in our Northern Clime, that many are heard to have been starved every Winter, and when Summer comes have little more then Chams allowance to his father, A Mantle to cover nakednes: And helpless too ; for what should they do ? They have their due Rights withholden,

Rev 14.4.  
John 1.29.  
1 Pet. 3.8, 9.

Col. 3.12.  
Matthew 5.4.  
Luke 6.36.

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holden, and cannot Dig, to beg they are ashamed. Shall they return to their fathers house? Most of themselves are Parents. Shall they take some commendable course of life? The Laws are here a hedge of Thorns in their way, or rather a Castle wall furnished with Artillery, and having store of Ordnance mounted and rammed up with penalties ready to be poured out, perhaps [1] ten pounds a moneth if they shall, keep a Malt-house or Brew-house, or use a Farme, and buy or sell, or use honest Merchandise with their Neighbours. Sit still and want they may, and sterue, and this like to be their desperate refuge.

(1) For the  
more quiet and  
virtuous in<sup>n</sup>  
crease and  
maintenance of  
divine Service,  
not preaching  
and teaching of  
the Word of  
God, with godly  
and good ex-  
emp<sup>t</sup> g. ving,  
&c. Be it en-  
acted, ordain<sup>d</sup>  
&c. That no  
spiritual person  
secular or regu-  
lar, of what de-  
gree soever he  
or they be, shall  
from henceforth  
take to farme to  
himself, or to  
any person or  
persons to his  
use of the Lease  
or Grant of the  
King our Sovr<sup>n</sup>  
reign Lord, nor  
of any other per-  
son or persons, by Letters Paten's, Indentures, Writings, by word or otherwise, by any  
manner of means, any Manours, Lands, Censu<sup>r</sup>ments, or other hereditaments, for term of  
life, for term of years, or at will, upon pain to forfeit ten pounds for every moneth that he or  
any other to his use shall occupie any such Farme, by reason of any such Lease or Grant here-  
after to be made. The one half to the King, &c.

And be it also enacted by the Authority aforesaid, that no spiritual person or persons, Secular or Regular, of what estate or degree soever they be, shall from hencefor<sup>d</sup> by himself, nor by  
any other for him, nor to his use bargain, and buy to sell again for any lute, gain, or profit, in  
any Markets, Fairs, or other places, any manner of Cattell, Corn, Lead, Lime, Vides, Lea<sup>ther</sup>, Tallow, Fish, Wool, Cloon, or any manner of Cittall or Merchandise, what kinde  
soever they be of, upon pain to forfeit treble the value of every thing, by them or by any to their  
use, bargained or bought to sell again, contrary to this Act. And that every such Bargain  
and Contract hereafter to be made by them, or by any to their use, contrary to this Act shall  
be utterly void and of none effect. The one half to the King, &c. as before.

Prohibited &c that no spiritual person or persons, Regular or Secular, of what estate, degree  
or condition soever he or they be, from the sick of April next coming shall have, use, or keep by  
him or them selves, or by any person or persons to his or their use or commodity, any manner  
of Can<sup>n</sup>house or Can<sup>n</sup>houses to be used or occupied to his or their use, commodity or behoof:  
Nor any Brew-hous<sup>s</sup> or Brew-houses, to other intent then for their own use, under pain of the like  
ten pounds a moneth. 21 Hen. 8 cap. 13.

the Prophets exclaim against cruelty, oppression, wrong, the iron hand and stony heart? Some are ready [1] to sell the poor for a pair of shooes: [2] others remove the Land-marks and violently take away the flocks: they drive away the Asses of the fatherless, and take the Widows Ox for a pledge. Others [3] tear off the skin, and pull the flesh from off the bones, chopping them in pieces, as for the pot, and as flesh within the Cauldron: and do not the tears run down the widows cheeks? says Syracides. These are Complaints befitting Gods Book, of things Religion doth naturally abhor, and shall we further any such injustice as may, under what form soever, occasion them or the like, and yet have Charity in our Bible, Justice in our Law, Equity over all, and Mercy at the top of our Religion, above Sacrifice? Consider also one example or two, how such like injury has thriven and prospered, either with Sacrilege or without Sacrilege, of these that could not be content with their own, but must incroach upon their Neighbours, and have it, and they prospered accordingly with a Vengeance. *Abab* had a fair inheritance, His Ancestours lived well upon it as Kings of *Israe*l, and when *Naboth* had his own too, we hear of no complaint or disturbance, but when He that had Much must have More, He that had Little must lose of that, and the poor mans garment betaken away to piece the Rich mans skirt, perhaps to cloath his beast, or provide Hangings for his Lodging chamber, or Dining Room (as I never heard me thinks a sadder complaint then, that Walls are cloathed, while the poor go naked, Horses well futed and fed while Christians starved,) Then went all to wreck, and this incorrigible unreasonableness of one must be a cause to both of their confusion. A pang of lustfull covetousnes lays hold upon the rich mans greedy heart: His neighbours little Cottage and Garden himself falls desperately sick of, and never can be well till the usuall forms of Justice had been used for murther, fasting and prayer must let out the life-blood of the poor man to let in the ungodly King into his Vineyard, and then all as should be. But shall he prosper? No: To give warning to all unreasonable Mammonists who cannot be content with that they have, though Nine for one, unless they have

(1) Amos 2.6.  
chap. 8.6.  
(2) Job 24.2,3.

(3) Micah 3.2,3.

1 Kings 25.

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the other one for Nine the Tenth too, Let him couet, and take, possession with a vengeance : *Hast thou killed and also gotten possession ? Thus saith the Lord, In the place where the dogs licked the blood of Naboth, shall dogs lick thy blood, even Thine,* [1] and the Prophet Elijah was sent to tell it him, none of whose words would, or could, or did fall to the ground. *Gehazi* [2] could not be content with his Own, but must abuse his own Credit, and his Master's fruit, the expectation from a Servant, and interest in a Master both together, for a Talent of Silver (perhaps some spending money to his former means,) and two changes of Garments, the superfluities of a Ward-Robe, and how ended the butiness ? *The Leprosie of Naaman cleave unto thee and thy posterity (an hereditary plague,) and he went from the punishment's presence a Leper white as snow.* Achan [3] could not let the golden wedge and the Babylonish garment go in the Due way God had appointed, but must be filching for his private use, what had been publicly Devoted, and the whole Army, yea the whole Nation, yea all Gods people sped the worse for it. In

(1) Chap. 32. 38.  
(2) 2 Kings 5.  
(3) I Kings. 7.

(4) Chap. 6.  
17. 18. 19.  
Chap. 7. 1.

(5) Heb. 10. 31.  
(6) Chap. 12. 29.

deed it was a *Cherem*, [4] Religion had laid her sacred hands upon all that spoil for God, and thence the severity of worse, then ordinary indignation. [5] *It is a fearfull thing to fall into the hands of the living God,* for [6] *Our God is a Consuming fire.* Ananias and Sapphira their offence lay not altogether beyond the things of this life ; they did but take back what of Earth they had devoted to Heaven, and yet how does *the Wrath of God fall upon them to the utmost ?* We finde them gasping and dying at once and presently both ; as terrible Examples of divine severity as we finde any where, and yet the meek Apostle inflicted it by his power from another World, and I hope we believe it because we pretend to believe the Bible. Generally observe, there and in Uzzahs, and Uzziahs Case, the poor Wood-gatherer, the men of Bethshemesh, or wheresoever in the least Religion has been touched to be profaned, Gods jealousy has been up and his quick hand reached home to revenge with sharpnes of fury any such violation. Nor may we forget the poor man in [7] Nathans Parable : *Alas poor man ! he had not much, but one poor Lamb for*

plenty

plenty abroad, and that the Rich miser must have to spare his own fold, But shall it goe so? No, saith David in another Mans case, He shall feel my Angry Hand: By a great oath, his own life shall expiate an offence with these circumstances, and the lamb he shall restore fourfold beside, because He did this and had no pity! O pity, pity! is still a great part of the Bible goodness: Oppression and wrong, Nothing More, the merits of Hell fire by our Religion: the Law and the Prophets, the Old and the New-Testament joyn in to have justice to all, and Mercy to those in need a necessary qualification, No hopes of religion without them, because their want is a transgression of Religion, and what then of those who cannot be content with their Own, who will not give other men Theirs, who having Nine for One already grudge and complain that they may have that One for Nine also from Gods service, to sacrifice to their own greediness, covetousness, infatiate bellies, or lusts and voluptuousness. The laws of the twelve tables or Mahomets Alcoran, the Bannyanas (1) Shaster, or the (2) Persees Zundavastaw may teach them or us as much Religion as this: Nay the tables of the bosome afford it clear and fairly legible, that Every one must have his Own, or else there is no living, and this is the very outside, (I know mine own bosome) of that I did intend to contend for: Nor Therefore Throughout the world Due or can I fear any just man mine enemy.

But I will not now divert: Hitherto we have kept promise, and made our walk through the Groves of Paradise Onely: Gods blessed Book, from the Sacred leaves of whose Holy and heavenly Oracles have these amplifications been drawn, which it would be our wisdom to heed, as it is in our Faith to believe, and must be our Righteousnes to Obey; and this directing in what we should doe, or what we should not doe, about Civill Justice, by rule or example. Methink somewhat should stick, I hope it will, I pray it may, and None be the favour of death unto death, but, (as it will work some way) of life unto life, and that of the Soul, and Everlasting. All (3) Scripture is given of God: S. Paul tells us this (3) 1 Tim. 3. 16. as his word or Breath) and (4) Whatsoever was there Writ (4) Rom. 5. 4.

(1) The title of the law of J.M. East-  
lings: whose eight  
Moral command-  
ments are, Thou  
shalt not kill: Heriberts Tra-  
vels, page 43.  
(2) Some other  
Eastlings who  
call their law by  
the same name. One of  
them Morall pro-  
cepts is, Not to  
covet what belongs  
to another man:  
Id. page 51.

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ten aforerime was written for our instruction, that we through patience and comfort thereof might have hope and Light: Now among the heavenly contents of those Divine inspirations are these Rules given, these examples recorded, (1) That we might not lust as those (then set up for an Example) lusted; Nor Covet as they Coveted, nor Murmure as they murmured, Nor yet be destroyed, as they were neither of the destroyer: For these things happened to them for such Examples, but are written for our admonition upon whom the ends of the world are come. Thou hast, Christian, thine own light shining in them, which thou believest came down from heaven, of the same kinde with that outshined the brightness of the sunne,

(2) Act. 8. 9. 3,4. (3) Rev. 22. 11. Saul, Saul, Take heed, Take heed; Venture not too far, Why persecutest thou me? Believest thou? wilt thou not obey? If thou wilt not, He that (3) is holy, let him be holy still: and He that is righteous, let him be righteous still: and He that is unjust, let him be unjust still; and He that is filthy let him be filthy still: He that will Covet, let him Covet still; He that will have his neighbours Goods, let him at least grasp after it still: But withall know, (4) That God will bring thee to Judgment: (5) He that does wrong shall receive for the wrong he hath done, and with Him will be no respect of persons.

(6) Psalm 15.1. Iniquum regnum Dei non possidebunt: (6) Lord, who shall dwell in thy tabernacle, or inhabite in thy holy Hill? Not he that leadeth a Corrupt life, or doth the thing is not right to his

(7) 1 Thess. 4.7. Neighbour; (God (7) is the avenger of all such things, as is every where testified:) but sweareth, or giveth to him, and disappointeth him not, though it be to his own hinderance. Remember Him that (8) loved the wages of iniquity, and

(8) 2 Pet. 2.15,16 (9) Mat. 26.15. (10) Daniel 5. Judas (9) who sold his innocency for thirty pieces of silver; and (10) Belshazzar who must have the Temple-bolls to ca-

rouse healths in to his Kings & Concubines; He would hardly have forborn at the perswasion of a prophet, though he were Rich before, But the worth of a few talents must be taken from Gods then Church, which ended fearfully; His Countenance changed, His thoughts troubled, His back crippled, and His knees smote one against another. And yet this but

(11) Psalm 9.17. the beginning of Sorrows: For All the (11) wicked shall once

be

*be turned certainly into Hell, and All the people that forget God. Sed meliora canamus, I hope better things, and things that accompany salvation, though I thus speak:* That every Christian will be himself, That every believer will be ruled by his own Rule; that every son of God will be guided by his father, and give to every one his Due, whether God or man, as is written down in the draught of his will, the tables of the Old and New Testament. It hath been hitherto but mistake hath made men grumble, That some tyrannous imposition hath enforced Tythes, some Statute Rampant in behalf of the Clergy, perhaps foisted in by themselves in the last age; but now the truth is cleared up, the heavens shine, 'tis bright as day that the whole body of the Just law, has, and has from all times called for them, and made them due, a necessary part as any of Civill righteousness; Now Men I hope will then not deliberate nor dally, but walk in the light, while the Light shineth; Doing as they would be done by, Giving every one his Own, yea Paying, not Giving, for that is required of thee, if thou be just, not Bountifull. *I my self* <sup>1 Tim. 1. 13.</sup> also, says S. Paul, *Was sometimes a Blasphemer, a persecutor, and injurious, But I obtained mercy because (and as long as) I did it ignorantly and in unbelief, (No longer.) If I should have done it afterwards, after the truth came clear to my soul, or it shined from heaven, and I would or could have closed fast mine eyes against it, I might have overtaid my time, and the light have been taken from me, but I beleaved and converted, and then the Lord (that would have on all) had mercy on me, because I did it, as I did, hitherto in ignorance and unbeliefs.*

Now my last appeal shoule be *ad Populum Christianum*, from Several Persons, to whom hitherto, to the Body of the People of this Nation; High and low, Rich and poor, One with another, as the Psalm speaketh, and All Together, for the thing concerneth All: And my desire tends to this, That they would in the name and fear of God take heed what they doe, and not be too forward to set their hands to that they may beshrew their fingers for all days of their lives after, in shaking I mean or removing one Stone more out of the building to

U u

leave

<sup>Psalm 49. 2.</sup>

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leave the rest loose; or by unsetling *Levi's* Parsonage house, give such example or beginning to shake all the rest, that No one shall for an age live secure, That His will not next year fall down about his ears. Remember what before of, Imbarqued All in one Vessell, standing All on One bough. (Take heed of cutting that) and Beware of touching that string to any violence that holds All we have together. Gentlemen and Noblemen look to your selves, ye have(as now things are) fair inheritances; God bless them to you, and you to them; ye live in *Canaan*, Long may ye there live to serve God in Christ in all worldly felicity: But take heed of venturing too far in untrodden pathes that have at least shew of danger; (the earth seems to shake under you already;) Be not over-forward to the unsetling *Levi's* Portion in this good land the Lord your God hath given him with you, which stands here upon the same foundation of Law, (whether of God or Man) that yours and others doe, For fear if you should, what has but the same support may totter if not fall (with His) down together: Be sure there is Justice in heaven, and but too likely means on earth to bring it to pass, that if your hands should help to convey fire to one Corner of the thatch, It may very soon it spread and run all over the house, beyond the reach of strength or power of policy and honest art to suppress the flame, before it hath burned both you and yours, your stately and magnificent sumptuous Edifices. Your mansions are many, the Buildings great and fair, their Turrets high, the Battlements stately and lifted up, dispersed far and wide over your rich and ample possessions: Long may you enjoy them to comfort; But if you should rejoice in iniquity, and not in the truth, furthering or permitting that spoil is of the nature would ruine your selves and *Your own*; Take heed the stroke reach not home to you too soon, leaving you justly ere long neither house nor land, nor field, nor inheritance. And Good Christian people All whatsoever, Be not *Ye wilfull* to your own injury; Doe not stubbornly persist in a way may goe on to your inconceivable danger. If your Tythingmans due beas your Own right, if his Glebe be as your Freehold, and his Tenth from your land as your Nine in it, and

and the Land it self; take heed how you meddle with the common support, the foundation and onely stay and cement of both together: If his bee stirred, and yours thereby loose; if you take away his, and he put on for yours, (as why may he not?) if you both thereby fall a scambling, thence a quarrelling, and so a fighting what can follow hereon but very confusion? A third may as well strive for both, and then what have you gained? If the fence of strong Law be not able to keep Him harmless now, How should you expect that the same armour should defend you, and that spoil and violence should not break in to your disturbance, perhaps to lay All in Common, to which the breaking of some inclosures, does more then declare, act and operate to make way for. *Let every one have his Own*, and that is an easie and obvious piece of Justice: I say again, *Let every One have his Own*, and that's All I contend for, which should give offence, or shew of offence to None but those that would have that which is Other mens. That is His Own the Law makes so, of which *Levi* having as Much as any other Tribe, He must have thereby as much of Property, and thereby Right and Safety, and Security (He should:) and the troubling or disturbing him cannot in equity, and the nature of the Thing, but doe that which if it should be prosecuted by the same Principles must needs bring abour, and redound consequentially to the disturbance of all Israel. Justice is all I plead for, Common-Justice, a low and sordid Heathenish vertue not so much in Christianity, as I take under it, and thereby in it, as it comprehends under it universally all sorts of goodness: *Suum cuique*; therefore, good Englishman and Brother, and this is both Common Law and common Honesty.

As to the Publique I have said nothing thereto; Observe it all along, and that I have so tempered my stile, according to my meaning, that I neither have, nor can my pen be justly interpreted to have said any thing thereof one way or other. And observe it well: for private malice is often apt to shroud it self under the Statesmans Gown, making a stalking horse of the Publique to come at self ends, with craft of *from the power above*, fighting with greater advantage againt weak-

## The Civill Rights

Rom 13.

Esther 4. 21.

ness below, and then gold and armies may soon overwhelm (by such misuse) any private innocence. I crave therefore yet once more this notice heeded, that of the publique I neither have, nor meant, nor I hope have given occasion it should be thought I have said any thing. The Magistrate is that *ξυνια ταπείχων* or awfull power at top; it may be justly dangerous for any private man to intrude to meddle with, or whether by censure, direction, caution, counsel, or almost good advice to draw into his presence, unless there be to *Esther* her self held out the golden scepter of clear and evident in this case necessary, either permission or invitation. With him therefore I have thus soon done, almost as soon as begun, and craying pardon for but thus looking toward him, crave leave also humbly to take my leave and depart, the most that I have said to or of him, being but this, that I would or meant to have said nothing to or of him at all. A single self is the only fittest object, whether of admonition, instruction, information, or (if need be) contestation for him who is deservedly toward the very lowest stair of those that are such; and who yet trusting in the Righteousness of his cause, and therewith (that which uses not to be wanting) the assistance of his God, (the honour of Christ being also and the Being and continuance of the Gospel of Christ somewhat interested in the Event) fears not the best and greatest of those that are, in that singularity, upon the highest. Religion, Reason, Truth, Justice, and the *LAW* are his great Patrons; which as He defends, and would not have stirred a bodkin for any other; so he mutually hopes They will defend Him; and by them, they are so publique, returns that advantage which ere while was declined to have against him, of publique interesse and strength enough on his side: For they never come in alone, but assisting with the most voices and votes, arms and armies of men in the world, and if I have not them on my side, I disclaim mine own engagment, and all my undertaking and performance, presently. For I shall always account it honest policy, whatever in other matters, to strive Here to be always on This strongest side

side, so farre that I professe to remove and shift my saits as their appearance or advantage from them may occasion, that I may steer my course along with them constantly, nor will I be of that party, ( but rather forsake all, as near as I can my self) that shall in the least degree give them or what they would have, opposition. If any can shew I now am, I am not only ready to withdraw , but shal at any time hereafter shew my willingness to kiss that hand shal gently endevor to lead me from Errour to Truth, from Wrong to Right, Nay even love that Sober violence that will not suffer me to plod on securely and without controll in an ill way, Though I should be at first a little drowsie or inapprehensive ; But for the bitterness of malice and rage of fury, which uses to doubly torment, yet doe no good, wounding an adversaries perhaps reputation, perhaps patience, perhaps both, and through the sides of Truth too, and yet works no correction , nor establisheth any thing in the room of what it destroys, I leave to that Justice is wont to bring about *in foveam quam fodent*, and that the fire shall work onely upon that cole that bred it , but gently warming whom it would, but could not burn. So does malice, and *So let it*; onely eat into its Own bowels, and fury torment the enraged in their own flames ; for me, if any sparks thereof should fly about, and touching me somewhat sharply, prevail to a temptation of return of the like, the worst arrows of Revenge I have presently ready to retort are, Permission , Pity, Prayers, and Patience, being resolved to entertain the crois with nothing of more malignity then what I learned from my Saviour on the Crois , They may not understand themselves, *Father forgive them*.

Which as I have received from and by Gods grace in this my life ; so I hope and pray, ( and the rather hope, because I know I unfainedly pray for it) that it may accompany me to my death, and be mine to the end and in the end ; and this shall set me for ever beyond the smart of Injuries. Good Christian, be Thy self, Not a *Name onely as if thou Livedst*, but a Christian in Deed, in Love, in Meeknes, in Charity, in Justice, in Mercy, and forgiving as thou wouldest be forgiven. Love that Justice, Hate All iniquity , give Every man his Due, Prefer

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Prefer not the world before thy Soul, Honesty, or Religion ;  
 Let every one have His Own , but Love God Above All, and  
 pray that I may be as Thou art, and then no doubt God  
 which is our Own God shall give us Both His blessing ; His  
 blessing of peace and quiet Innocence Here, with eternall  
 rest in the world to come with himself ; To whom, One and  
 Three, be all honour and glory

**For Ever**

&

**For Ever**

**For Ever.**

**Amen,**

**Amen,**

&

**A M E N.**

Tω Θεω , τω Θεω .



## A Prayer of the AUTHOR.



*L O R D Jesu Christ, which sittest at  
the right hand of thy Father in ful-  
ness of Gl.ry, Sith by thy Providence  
I have had Opportunity, by thy Grace  
been Directed, by thy Power Inabled  
to lay together these things, condu-  
cing, I trust, to Thy Honor and Glo-  
ry; I give thee humble and most hear-  
ty thanks for the Riches of thy Mercy*

vouchsafed herein, and Pray, both that Thy Blessing may go along with this Work of thine own Service, and that the Things may be successfull Thereby for that Great end for which I have intended them. Give them Prosperity and good Succes abroad in the World, and Give thy Servant always Grace to rest even abundantly and richly contented, satisfied, and rewarded in having attempted any thing to the Honour of Thy Name: Let thy Gospel flourish by All means, Prosper All Courses that tend That way, and if the continuance of these stated Dues be One (so looked upon by the eye of thy Providence, and requisite in the nature of things,) I cast my self down before the foot-stool of thy Throne, Praying and Beseeching, That it may not be in the Power of Man to withdraw or pervert, disturb or destroy. Though thine adversaries should be many and rage horribly, yet *Thou that dwellest on high art still Mightier;* Arise, O God, and let not Man have the upper hand; let thine enemies be judged in Thy sight, and Put them in fear that they may know themselves to be but Men.—Defend also thy servant, who putteth his trust in Thee: And if he desire before All things Thine Honour, The stability of thy Gospel has been his chief and onely aim, nor has Any line here but been meant to tend, (as directly as guided by humane frailty it could,) to that point to end in that Center, *O give thou Not Him then over into the Will of his adversaries, that if any Hate they may obtain Lordship o-*  
*ver*

*A Prayer.*

*ver Hims : Make good Thine Own Cause, in standing by Him that labouereth for that Cause, Thy Truth and Thee; Stretch forth the right hand of thy Power evermore mightily to succour and defend Him, Deliver him from the gathering together of the froward and from the insurrection of Evil Doers; Let the ungodly or unjust fall into their own Nets together, but let him ever escape them. Give also, Good Lord, Merciful and Gracious, unto All that love thy Truth eyes to see it, Hearts to embrace it, Affections to cherish it, and a good will to Do accordingly : and vouchsafe likewise Prudence against the subtil Serpent that Any who bear good will to Sion, may never procure her Hurt, but stablish these due Means on Earth thy Providence looks upon and has appointed as necessary to accomplish their just and holy ends, what they meant to establish, by no improvidence ever disturbing or destroying. Finally, Grant Victory to Truth, Progress to Justice, Stability to thy Church, Perpetuity to Thy Gospel, and that no Lovers thereof Here may take up lower then with, That the Light thereof may continue shining Ever and Over All the world, to All ages and generations. Thus let thy Name be Hallowed, O our Father Which art in Heaven, Let thy Kingdome come O Saviour and Blessed Redeemer, Let thy Will be done Most holy and blessed Spirit, in Earth as it is in Heaven : Give us, Forgive us, and preserve us from Evill : For Thou only, O Christ, with the Holy Ghost, art most high in the glory of God the Father ; To which God One and Three be All Honour and Praise for ever and ever. Amen.*

*Grace be with all those that Love the Lord Jesus Christ  
in Sincerity.*

POST-



## POST-SCRIPT.

*Courteous Reader,*



OR so I style thee, and hope to finde thee, or have need to Make thee, and the most bountiful dilatation of thy Courtesie drawn forth to Cover or Pardon those many imperfections this my first-born hath brought with it into the world. Some doubtless both in matter and form; for Who ever Spake that Erred not, Much in More then a little? (*In multilogio nunquam deerit Vanitas*, This at the least, as the Wise man assured,) from Shortness of Inquiry, Dimness of Understanding, Weaknes of Judgement, Distraction of Busyness, Inadvertency or some fruitful Cause of Errour or other, Most men being forced to number their mistakes by their Pages; Only as to purposedly Erroneous, Deceiving or being Deceived, I Sacredly and Seriously disavow. At the Preis also Poor Mephibosheth caught some mischance: Blemished in his face? nay, crippled in his limbs, lamed at least in his feet, and complaining oft he can hardly go right forth for want of sense; which bruises require thy Healing Correcting hand; Some of Many are collected, and annexed, The rest, like our daily slips, almost innumerable.

Thou art to be, 1. Remembred, that *In multis labimur omnes*, None (below) goes so sure but he slips sometimes, None so firm and upright but he steps a little awry, and Thy selfe wilt, I trust, ask pardon for thy daily failings. 2. Intreated, to *Do as thou wouldst be Done to*; Judge (or Judge not) as thou wouldst (or wouldst not) be judged; in the spirit of meekness, Considering Thy self, lest Thou also be tempted. 3. Informed, That a purpose was of attempting satisfaction

Matth 7.12.  
1b. Ver. 1.  
Gal. 6.1.

*Postscript.*

of those many whether frivolous or more weighty and substantiall doubts that usually occurre about this established Course (the frame whereof was likewise contrived, and divers of the materials brought together,) As that , This proportion is too much , The Receivers are Ill Men , Good Men take offence at Both , Exactions throng in with Suits , and Injuries with Exactions , The bottome of all is in *Canaan*, some Jewish Laws , The people shrink under the Heavnels of the Burdens , *Inre Divino* is declined by Many , ( and Here,) The Supream Power may alter all Humane Constitutions , &c. But , because These would both lead toward *the footstool of the Throne* , (whether , save in my Devotions , I constantly decline to look,) That which Is is Much , These might make Too Much , And here are Principles (especially from the Main of Civill Right made unquestionable , and the Morall and Indispensible duty of Justice in paying which must needs follow thereon ,) upon which common reason may work out satisfaction to the Most , I therefore Suppress or Delay , as Accepts of what is here may further encourage or dissuade . Be requested , 4. and lastly , not to take Causeless exceptions at any of those things which as they come from us and in our Humane frailty cannot but afford those that are Material , Reall , Weighty , and Substantiall enough . I speak of most things As They Were , and as in the Times When They Were (How else should I reach home?) as Churches , Clergy , Royakies , Rights , Jurisdictions , Princes , Peers , Powers , Priviledges , and Preeminencies , &c. Not that I am willing to engage for Alt another may think good to oppose about them , Or stand in Defensive of Any thing howsoever since altered : But (v. 8, as the Apostle suggested with much quicknes in another case,) *One Thing I do* , That I am about I *Here* keep to , and so that be Secured , would not willingly intromix , draw or be drawn in to other accidentall by-Quarrels ; So I may have leave to conveigh my Parlee to the World in the language of the World , best understood by the World , I would not willingly inwrap my self in controversie about any other of Those Things they yet stiffly enough maintained , and in a rigid import who took up the words and gave

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gave them Us in their first and full sense; Nor hast thou reason to be offended that I balk not the publick tone, to conform to thy Singularity, for the Many are to be regarded in A Multitude, and the Most in most largely diffusive Communication to All; But if thou remain obstinate and undeniable in thy expectation or otherwise satisfaction, I conform to Thy desire: Change what thou wilt, so thou keep the matter; Retain the subitance and vary the phrase; Hold to the Body, New-shape my outward form of Expression, conform to thine own will, judgement, or fancy; At thine own charge I approve, or (if thou wilt) Suppose the thing Already done.

Thou sha't but wrong thine own Judgement to thy judging friends, if thou quarrel with shadows, or take advantage of that I confess to take licence and scope enough in, a free and plentiful use of Tropes and Figures. Allusions or Similitudes, thou knowest, are no good ground of Argument, nor should, thou knowest as well, of Arguing or Accusation: These sporting excursions of busie and active fancy have been allowed to accompany and recreate the work of gravest pens, Of no worse use in consequence then flowers to straw and adorn the work finished; True Charty, if thou hast any, will never make the worst of any thing is doubtful or may reasonably be interpreted with Candour to a better sense, Nor can thy Christian Charty, if it be true, but be large enough to cover a heap of worser sinnes. I confess already to say many things I would not stand to in the strictest sense, (Examine Scripture, if thou wouldest be such a Judge,) much less in Any thy Wit or leisure can affix, least in what is Heterodox to the Established and so like to be Troublesome, or indeed Any but what I use or mean, (And yet hope All may pass with Candid and Ingenuous Mindes:) Think not if I mention a Temple or Oracle, An Altar, Priest, or Sacrifice, Cross, or Supposed Saint that I am presently at my Adoration, or love All I mention without any signified dislike: Of most things I speak as they Have been taken, My eye upon the main, diverts and takes me off from purposed meddling or giving all I think of the intermediates, and so I come right to my ways end,

## Postscript.

what matter if I have been a little out in what tended thither? So I come safe and sure Home, I will not shun to own mistakes (involuntary) by the way. I conform my self, (at least I think I do) to the present state and condition of Things, being no Prophet or the son of a Prophet to judg of Future, or foretel in the least measure any thing of that which is to come : And therefore unreasonably shall any expect I come up to that which Shall be. I know not What, or When, or Whether it ever shall be. Antedating obedience to the Law, (which is a path narrow enough as it is, and hard to keep in the manifold observances it requires;) But if any thing shall be changed, I have no doubt ready enough the Lawful obedience of a Christian, as keeping my self close to that I often glance at, sometimes express, never but mean, that Religion tendeth much to peace, Civil peace, and in this World, nor can that is truly Christian, (being also truly taught and understood) ever tempt or permit to seditions disturbance in Any Civil State. Howsoever, Till Change be Made, What is Present is the rule, and should be the defence of any that adhere or stick close to their known allowed guide, Importing nothing but innocence and justification till it be altered; Further conformity will come early enough when the Law is fixed, Till then there is no avoca and should be no iustitia, for Where is no Law there can be no Transgression.

Rom. 4. 13.

Math. 10. 10.  
Luk. 10. 7.  
Gal. 6. 6.

There may be whom other courses like better: Learned and pious who stand to the Good Will of their people, (not like to be any great losers neither if their own Canons take place, *The Labourer is Sure Worthy of His reward, The Catechumene With his Catechist, the Taught with his Teacher, &c non Communicating in all his Goods*, they being further but reasonably allowed to interpret their chosen rule, as, Who but the Priest should give the minde of His Oracle?) And these may think it Mercenary to make any bargaine (as 'twere before-hand) for Certain Wages for this outward Humane work in bringing in the Lords Harvest, accounting it Covetousness, Improvidence, Distrust of God, or Undervaluing the Work to condition or expect any thing stated before-hand, (as of the Tenth,) They will rely on what is after

after Given. May they do so, and also have so ; yet so as they reasonably allow Others to keep Their Own several Way ; else they tyrannically impose who would leave most at liberty ; *Petimusque damusque*, or if not both Mutually No reaſon either ſhould inforce or be at Liberty. Peters faith we know was strong enough to walk to Jesus upon the Waters ; and when he but ſaw Him on the other ſide, he forſtook all preſently, and girding his fishers Coat unto him cast himſelf into the Sea, and ſo came ſafe to him in a way moſt others feared, or might have been drowned by ; And Yet John and the other Disciples ſtaid for a little ſhip. Their zeal awaited a Convoy, and by ſuch Helps alone as others uſed They would come to their Maſter a land ; Whither alſo Thus with safety they Did come, and were with equal welcome admitted to be where Peter was : Perpetually Aſſuring that though the boldneſs of the faith of ſome dare venture on miraculous wonderfull ways (wherein oth. rs may have miſcarried, or are like to do) venturing to tread on the Waves which many tremble at, making Their paſſage in the Sea, and their foot-path even on the Waters as the Psalm ſpeaketh, *Tet their fellows may with approbation of acceptance, and assurance of that approbation enough, expect and require the conduct and help of due and accustomed uſual ordinary means to come unto Christ* ; and (though they fear to venture on the waves, truſt the ſlipperineſſe of meer voluntary ſtayes which have deſceived and ſunk many low enough,) These as Those with safety, ſpeed, ſucceſs, and ſure, and ſoon enough come Alſo to their Saviour. He that will not be Certain has no reaſon to blame Him that Would, any more then He that is ſtrong ought but to bear the infirmities of the weak, for the common edifying or ſupport of both, *Not pleaſing himſelf alone*. If That may do Well, This Better, and is Likelier, if not yet Surer, and Full as Lawfull.

And yet for These neither have I done more then I undertook, or attempted any thing for their Jure divino, which as it was without my bounds, ſo would I not incur the blame of Transgression by meddling with either way. Sometimes I muſt have touched upon it, for it was upon the very borders, ſitu-

John 21.7,8.

Rom. 14.1.

## Postscript.

ate in the Confines of mine own walk, yet have I done it with that Wariness as not to intromix. Which it might be also needfull to note with so often repeated Declaration, least any should interpret doubtfull insinuations to a perverse sense, or that I do, what I often say I do not, disclaim or oppose it. By no means, & under this very solemn protestation, submonition, and concluding Asseveration; The most likely that way being in a fair and rational construction otherwise I think interpretable ; and what has most Colour retaining yet à *Salvo*, being warily read, to redeem it to constancy and from holding contradiction to firm purpose and All the rest. Nay so far were things minded and condescended to *This Way*, and in favour, that upon His motion, who perused, approved, liked well, and after many other encouragements Honoured All with acceptance of a Dedication, Somewhat of Divine Right Should have been added and annexed (by another Pen) and in me it lay not that it was hindered, and came not forth. None of that which is, 'tis hoped, can be offensive to any to whom Justice, Truth, and Law create not a scandall ; While our Records and Those Laws are preserved ; to what other end could I think them kept and declared for, but that they might, when occasion is, be produced and alledged ? Nor can I pre-judge any, bearing the Name of a Christian, of so vicious a tenderness, as that the evidence they give to Truth and Righteousness any where, or here, can offer him any the least occasion of displeasure or dislike.

For those are interessed (deeply) for the profit, especially the Reverend and Learned, my Fathers and Brethren of most Sacred and *Divine Profession*, of Them I have onely to crave, (I must and ought) *Exceeding Pardon*, (*Vos qui statis in domo Iehova, in atriis domus Dei nostri*) that I have so weakly, lamely, and in many regards insufficiently performed, by bold attempt of single solitary industry, what might have well required the best of Their Conjoyned furtherance, *Humbly acknowledging* that a Work of this Difficulty in it self, and high Concernment unto Truth and Them, might fittingly have awaited the Conjunction of many heads, and been more happy by falling into the hands of many co-operating Advancers, who

who might have both made out performance somewhat answerable to desert, and added also the Countenance of Authority, which the privacy of my Condition or unequal abilities Could neither expect or promise my self or Others : *But then wish all when I considered and They shall please to reflect on,* The darkness and untroddeness of the way, wherein I have been forced to go, mostly Alone, and (looking downward) *in Their only Service,* The number and distance of the flowers from which this honey, as little of it as it is, must needs have been gathered, (*Without any help.*) The Labour of the Work, The difficulty of the whole, And so little encouragement for any part, that (in such stormy Times, when mens greedy affections are also checked, their lusts crossed, & their tender corruptions touched to danger of offence) Impunity is towards the highest of Hopes, *They will then,* 'tis hoped, if not for any desert abroad, at least from the Innate Candour and Ingenuity of which the World acknowledges such store within their own bosomes, *Vouchsafe this humbly craved and much desired and needed Pardon,* or perhaps yet a little farther and more favourably accept this pledge of Love and Evidence of Good will, none can but see was meant (in way to the glory of God and establishing his Book) to end (as to here below) *Cheifly (for his Own is inconsiderable in Their Profit, Advantage, and Benefit :* It is left to their better skill, and united endeavours if they may be had, to smooth up by degrees unto the highest Requisite of all necessary perfection what I have, I hope, not altogether unluckily begun (for this is but the drawing of my Ruder Coal,) and to add the Exactness of Art, Proportion of Lineaments, Symmetry of parts, Life of Colours, and all other Imbellishments of Ornament, Circumstance, or Substance, (very needfull in so very needfull a Work) to the degree of How, What, and As they Please,

In the great variety that is in the World, and some Opposition of Judgements, it remaineth hard if not impossible to please All, While One desireth This, Another That, One is for Antiquity, Another for Novelty, Such Laws please Some, The Contrary Others, and Some like None at all, Stubbornness making it out to a Prodigality of life often in Defence of bare

bare Opinion : In which Case what should now the Speaker Do or say ? What, but even sit down in the Conscience of his Integrity ? Acquiesce in that he meant to offer His Sacrifice of Service to None but God and Truth ; and if a few Sober and Grave either Approve or Pardon, to Account This (or but even the Last ) a full accomplishment of Desire ; Taking assurance it is very unlikely to meet with any thing but Contradiction from *Those Many*, who Agree chiefly to contradict and cross each other : When All Men are of a Minde, then may it be hoped One Thing will please All ; But This not like, till the same Gale of Winde fits severall mens Voyages, who have their distinct and opposite ways to All points of the Compass.

Now sit down and Consider, Judge, Differ, and Be Charitable, O Christian ! Remember much That thy Great Name of a CHRISTIAN, implying nothing More then To Be, to Be nothing more then Good and Vertuous, to be Good and Vertuous scarce in Any thing So Much as those necessary accomplishments of a Christian, in Meekness, Mercy, Tender-heartedness, Grace, Peace, and Love ; endeavouring to keep the Unity of the Spirit in that Bond of Peace, as the Apostle counsels, *υετα πνοης ταπεινωσεων, και δεσμων*, *υετα μαρτυριων, &c.* with all Humbleness, Lowliness, Gentleness, and Long-suffering, Bearing and Forbearing ; As knowing that Rage is Brinish, Cruelty Inhumane, Fierceness Heathenish, and Thou art thy Thy Self Nothing more then in Readiness to Give and Forgive, Him that offends, even Pardonably, till Seven times, and Seventy times Seven. So Put on therefore (as the Elect of God, Holy and beloved of Him) *πλευρας ομοιων* of Mercies, Kindness, Humbleness of Minde, Meekness, Long-suffering, Forbearing, and Forgiving ; even as did for Christ his sake forgive both Us; And then the Peace of God, in *καρδιαν πνευματικην* it passeth all Thought shall no where dwell in thy Heart, as Christ our Lord. Amen.

F I N I S H

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JOHN DOUVNAM.

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